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DISTRICT II

November 6, 2024

To:

Hon. Paul Bugenhagen Jr.
Circuit Court Judge
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

Monica Paz
Clerk of Circuit Court
Waukesha County Courthouse
Electronic Notice

Roberto Ceron Peralta #604675
Gordon Correctional Center
10401 East County Road G
Gordon, WI 54838

Daniel P. Murray
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

2024AP892-CRNM State of Wisconsin v. Roberto Ceron Peralta (L.C. #2023CF252)

Before Gundrum P.J., Neubauer and Lazar, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Roberto Ceron Peralta appeals from a judgment convicting him of operating a motor vehicle while intoxicated (OWI), as a seventh, eighth, or ninth offense. Ceron Peralta's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22)¹ and *Anders v. California*, 386 U.S. 738 (1967). Ceron Peralta was informed of his right to file a response to the no-merit report, and he has not responded. Upon our independent review of the Record as

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

mandated by *Anders*, we conclude that there is no arguable merit to any issue that could be raised on appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

The State initially charged Ceron Peralta with OWI, as a seventh, eighth, or ninth offense; operating a motor vehicle while revoked; and failure to install an ignition interlock device (IID). According to the criminal complaint, at approximately 11:40 p.m., law enforcement received a report of a vehicle traveling eastbound in the westbound lanes of Bluemound Road. When an officer arrived at the scene, he observed a vehicle that matched the description provided by dispatch stopped facing eastbound “in the left lane of travel of westbound Bluemound Road.” The officer approached the vehicle and saw two adults in its front seats. The keys were in the ignition, and the male driver was attempting to turn the ignition key. The passenger opened the vehicle’s passenger-side door, and the officer “immediately detected a strong odor of intoxicants emanating from the vehicle.” A second officer later noticed a strong odor of intoxicants coming from the driver’s side of the vehicle.

The vehicle’s driver was ultimately identified as Ceron Peralta. The second officer at the scene reported that Ceron Peralta was “dazed and confused,” had “extremely bloodshot and glassy” eyes, and appeared to have urinated on himself. A records check showed that Ceron Peralta’s driver’s license was revoked, that he was required to have an IID installed in his vehicle, that he was subject to a 0.02 blood alcohol concentration (BAC) restriction, and that he had six prior OWI convictions. Ceron Peralta refused to perform field sobriety tests, but he later consented to a blood draw after being read the “Informing the Accused Form.”

Subsequent analysis of Ceron Peralta's blood sample revealed a BAC of 0.295. The State then filed an Amended Information containing an additional charge of operating a motor vehicle with a prohibited alcohol concentration (PAC), as a seventh, eighth, or ninth offense.

Ceron Peralta entered a guilty plea to the OWI charge, pursuant to a plea agreement. In exchange for Ceron Peralta's plea, the State agreed to recommend that the circuit court dismiss and read in the charges of operating a motor vehicle while revoked and failure to install an IID.² In addition, the State agreed to recommend revocation of Ceron Peralta's driver's license for thirty-six months, "substantial prison," the installation of an IID, and attendance at a Victim Impact Panel. The State further agreed that it would take no position on the amount of the fine imposed by the court but would request mandatory court costs of \$50 for Ceron Peralta's blood draw.

Following a plea colloquy, supplemented by a signed plea questionnaire and waiver of rights form, the circuit court accepted Ceron Peralta's guilty plea, finding that it was freely, voluntarily, and intelligently entered. Ceron Peralta's attorney agreed that the court could rely on the facts alleged in the criminal complaint as the factual basis for Ceron Peralta's plea. In addition, Ceron Peralta conceded that he had six prior OWI convictions.

After accepting Ceron Peralta's guilty plea, the circuit court proceeded directly to sentencing. During its sentencing remarks, the court considered the gravity of the offense, Ceron Peralta's character, and the need to protect the public. The court then imposed a sentence

² The circuit court and the parties acknowledged during the plea hearing that upon Ceron Peralta's conviction for the OWI charge, the PAC charge would be dismissed by operation of law. *See* WIS. STAT. § 346.63(1)(c).

consisting of four years and six months of initial confinement followed by five years and six months of extended supervision, with ninety-seven days of sentence credit. The court also ordered a thirty-six-month revocation of Ceron Peralta's driver's license, a thirty-six-month IID requirement, and attendance at a Victim Impact Panel. In addition, the court imposed a fine and court costs totaling \$1,869. Finally, the court stated that to the extent Ceron Peralta was otherwise "eligible for any programming that would reduce [his] sentence," the court would make him eligible for that programming after serving four years.

After Ceron Peralta's judgment of conviction was entered, the Department of Corrections alerted the circuit court that the extended supervision portion of Ceron Peralta's sentence violated WIS. STAT. § 973.01(2)(d)4., which provides that the term of extended supervision for a Class F felony "may not exceed 5 years." The court then entered an amended judgment of conviction that reduced Ceron Peralta's term of extended supervision to five years, resulting in a total sentence of nine years and six months.

The no-merit report addresses: (1) whether Ceron Peralta knowingly, intelligently, and voluntarily entered his guilty plea; and (2) whether the circuit court imposed an illegal sentence or otherwise erroneously exercised its sentencing discretion. Upon our independent review of the Record, we agree with counsel's description, analysis, and conclusion that these potential issues lack arguable merit. The no-merit report sets forth an adequate discussion of the potential issues to support the no-merit conclusion, and we need not address them further.

Although not addressed in the no-merit report, this court also concludes that there would be no arguable merit to a claim that Ceron Peralta's trial attorney was constitutionally ineffective by failing to file a suppression motion. Law enforcement's observation of Ceron Peralta's

vehicle stopped facing eastbound in one of the westbound lanes of Bluemound Road provided reasonable suspicion for the initial traffic stop. *See State v. Popke*, 2009 WI 37, ¶23, 317 Wis. 2d 118, 765 N.W.2d 569 (explaining that an officer may conduct a traffic stop when, “under the totality of the circumstances, he or she has grounds to reasonably suspect that a crime or traffic violation has been or will be committed”). In addition, the officers’ observations during the stop—specifically, the odor of intoxicants emanating from the vehicle, Ceron Peralta’s apparent confusion, his “extremely bloodshot and glassy” eyes, and the fact that he appeared to have urinated on himself—provided reasonable suspicion to expand the scope of the stop to conduct an OWI investigation. *See State v. Hogan*, 2015 WI 76, ¶35, 364 Wis. 2d 167, 868 N.W.2d 124 (explaining that the scope of a traffic stop may be expanded to investigate additional suspicious factors that come to the officer’s attention if the expansion is supported by reasonable suspicion). Finally, the complaint states that Ceron Peralta consented to a blood draw after being read the “Informing the Accused Form,” and there is nothing in the record to suggest that Ceron Peralta’s consent was involuntary. On these facts, there would be no arguable basis to claim that Ceron Peralta’s trial attorney was constitutionally ineffective by failing to file a suppression motion. Furthermore, our independent review of the Record reveals no other arguable basis for an ineffective assistance of trial counsel claim.

Our independent review of the Record discloses no other potential issues for appeal.³

³ We note that, subject to a limited exception for double jeopardy claims that is not applicable here, Ceron Peralta’s guilty plea forfeited his right to raise other nonjurisdictional defects and defenses, including claimed violations of his constitutional rights. *See State v. Kelty*, 2006 WI 101, ¶¶2, 18 & n.11, 294 Wis. 2d 62, 716 N.W.2d 886; *see also State v. Lasky*, 2002 WI App 126, ¶11, 254 Wis. 2d 789, 646 N.W.2d 53.

Therefore,

IT IS ORDERED that the judgment is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Daniel P. Murray is relieved from further representing Roberto Ceron Peralta in this appeal. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals