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DISTRICT III

March 26, 2019

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

2018AP1573-CRNM State of Wisconsin v. Jediah Allen Schuessler
(L. C. No. 2016CF60)

Before Stark, P.J., Hruz and Seidl, 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).

Jediah Schuessler appeals from a judgment entered upon his no-contest plea convicting him of sixth-offense operating a motor vehicle while under the influence of an intoxicant (OWI). Attorney Erica Bauer has filed a no-merit report seeking to withdraw as appellate counsel. *See*

WIS. STAT. RULE 809.32 (2017-18);¹ *Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit report sets forth the procedural history of the case and addresses Schuessler's plea and sentence. Schuessler was sent a copy of the report, but he has not filed a response. Upon independently reviewing the entire record, as well as the no-merit report, we conclude that counsel shall be allowed to withdraw and we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

According to an amended complaint, a Brown County sheriff's deputy stopped Schuessler's pickup truck after observing the vehicle make a turn with squealing tires and deviate from its lane three times, and further learning from dispatch that the vehicle did not match the description associated with the license plate registration. Schuessler attributed the squealing tires and lane deviations to the fact that he had been speaking on his cell phone, but the deputy noticed a strong odor of intoxicants coming from Schuessler and observed that his speech was slow and slurred. The deputy administered field sobriety tests and arrested Schuessler based upon his poor performance on the tests, in conjunction with Schuessler's admission that he had two beers before driving and additional information from dispatch that Schuessler had a blood alcohol concentration (BAC) of 0.02 based upon prior OWI convictions. A preliminary breath test immediately following the arrest showed that Schuessler had a BAC of 0.164.

The State charged Schuessler with OWI, inattentive driving, and operating a motor vehicle with a prohibited alcohol concentration (PAC). Schuessler agreed to enter a no-contest plea to the OWI charge in exchange for the dismissal of the inattentive driving and PAC charges and a fine enhancer, with the parties free to argue at sentencing. The circuit court conducted a

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

colloquy to determine that Schuessler understood the nature of the charge and the penalties he was facing, as well as the constitutional rights he would be waiving. The court then accepted the plea as having been knowingly, intelligently, and voluntarily made.

The circuit court sentenced Schuessler to two years of initial confinement and three years of extended supervision subject to conditions, including completion of an alcohol and other drug abuse assessment, absolute sobriety, compliance with recommendations made as part of Schuessler's COMPAS² risk needs assessment, and SCRAM³ monitoring. The court also imposed standard costs, awarded sixty-three days of sentence credit, and deemed Schuessler eligible for both the Challenge Incarceration Program and the Substance Abuse Program.

We agree with counsel's analysis and conclusion that any challenge to the plea or the sentence would lack arguable merit. Our independent review of the record discloses no other potential issues for appeal. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

² COMPAS stands for Correctional Offender Management Profiling for Alternative Sanctions. A COMPAS report provides actuarial risk assessments that may be relevant at sentencing for such matters as: "(1) diverting low-risk prison-bound offenders to a non-prison alternative; (2) assessing whether an offender can be supervised safely and effectively in the community; and (3) imposing terms and conditions of probation, supervision, and responses to violations." *State v. Loomis*, 2016 WI 68, ¶88, 371 Wis.2d 235, 881 N.W.2d 749. Here, the court appropriately tied the report's use to Schuessler's supervision.

³ SCRAM (Secure Continuous Remote Alcohol Monitoring) is the brand name for a series of electronic monitoring devices that can test a person's alcohol levels through the breath or the skin.

Accordingly,

IT IS ORDERED that the judgment of conviction is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Erica Bauer is relieved of any further representation of Jediah Schuessler in this matter pursuant to WIS. STAT. RULE 809.32(3).

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

Sheila T. Reiff
Clerk of Court of Appeals