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DISTRICT II

August 23, 2023

To:

Hon. Scott C. Woldt
Circuit Court Judge
Electronic Notice

Tara Berry
Clerk of Circuit Court
Winnebago County Courthouse
Electronic Notice

Jeremy Newman
Electronic Notice

Winn S. Collins
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Christian A. Gossett
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Cal S. Morgan, #399487
Prairie Du Chien Correctional Inst.
P.O. Box 9900
Prairie du Chien, WI 53821

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

2022AP331-CRNM State of Wisconsin v. Cal S. Morgan (L.C. #2020CF460)

Before Gundrum, P.J., Neubauer and Grogan, 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).

Cal S. Morgan appeals from a judgment, entered on a no contest plea, convicting him of operating while intoxicated as a seventh, eighth, or ninth offense. His 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). Morgan received a copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the report and an independent

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

review of the Record, we conclude that the judgment may be summarily affirmed because there are no issues with arguable merit for appeal. *See* WIS. STAT. RULE 809.21.

Officers were dispatched to respond to reports of an impaired driver at a gas station. One caller advised dispatch that an individual at a gas pump appeared intoxicated and had difficulties opening his gas tank. Another caller advised dispatch that an individual who appeared intoxicated tried to come into the gas station's convenience store with no shirt on. Officers arrived and found the individual, identified as Morgan, pumping gas into his vehicle. Morgan admitted to driving to the gas station. He also told officers that he had not had anything to drink and that his imbalance was a medical issue. Officers observed Morgan was incoherent, had slurred speech and red/glassy eyes, smelled of alcohol, and was using his vehicle to balance. Morgan eventually admitted he had a couple of beers before driving to the gas station. Morgan also admitted that he was on supervision for a seventh operating-while-intoxicated offense, had a revoked license, and was required to have an ignition interlock device in his vehicle. Morgan was arrested, and his blood was drawn pursuant to a warrant. His blood alcohol concentration was 0.182.

In an Amended Information, the State charged Morgan with operating a motor vehicle while under the influence of an intoxicant and operating with a prohibited blood alcohol concentration; both as a seventh, eighth, or ninth offense; operating a motor vehicle while revoked; and failing to install an ignition interlock device.

In exchange for Morgan's plea to operating while intoxicated as an eighth offense, the State agreed to dismiss outright the operating with a prohibited blood alcohol concentration and dismiss and read in the remaining charges. The State agreed to recommend three years' initial

confinement, which was the mandatory minimum period of confinement, and five years' extended supervision. Morgan agreed with the three-year period of mandatory confinement but asked for three years' extended supervision. The circuit court sentenced Morgan to three years' initial confinement and five years' extended supervision. It also imposed a $400 fine. This no-merit appeal follows.

The no-merit report addresses potential issues of whether Morgan's plea was knowingly, voluntarily, and intelligently entered and whether the circuit court properly exercised its discretion at sentencing.

We first consider whether any challenge to the validity of Morgan's plea has arguable merit. *See* ***State v. Bangert***, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). Although we observe that the circuit court did not ask Morgan whether anyone had made any threats or promises to get him to enter his plea and did not inform Morgan that the minimum penalty for this offense was three years of initial confinement, these deficiencies do not provide grounds for relief because the information was included on the plea questionnaire form and the circuit court confirmed Morgan reviewed the plea questionnaire with his attorney and understood the information in the document. Additionally, appellate counsel advises this court that grounds do not exist to challenge Morgan's understanding of the mandatory minimum penalty or argue that he entered his plea under any threat or promise other than the plea agreement. *See* ***State v. Hampton***, 2004 WI 107, ¶46, 274 Wis. 2d 379, 683 N.W.2d 14 (explaining a defendant may move to withdraw a plea by alleging that there was a plea colloquy defect *and* that the defendant did not know or understand the information that should have been provided). We therefore agree there is no arguable merit to challenge the validity of Morgan's plea on these bases.

Our review of the Record and of counsel's analysis in the no-merit report satisfies us that the circuit court complied with its remaining obligations for taking Morgan's plea, pursuant to WIS. STAT. § 971.08; ***Bangert***, 131 Wis. 2d at 261-62; and ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. Accordingly, we conclude that any challenge to the validity of Morgan's plea would lack arguable merit.

With regard to the circuit court's sentencing discretion, our review of the Record confirms that the court appropriately considered the relevant sentencing objectives and factors, observing that Morgan was on extended supervision for another operating-while-intoxicated offense when he committed the present offense and posed a danger to the community. *See* ***State v. Odom***, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695; ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The resulting sentence was within the maximum authorized by law. *See* ***State v. Scaccio***, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449. The sentence was not so excessive so as to shock the public's sentiment. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). Therefore, there would be no arguable merit to a challenge to the court's sentencing discretion.

Our independent review of the Record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the judgment of conviction, and discharges appellate counsel of the obligation to represent Morgan further in this appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Jeremy Newman[2] is relieved of further representation of Cal S. Morgan 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

[2] Attorney Cary E. Bloodworth filed the no-merit report. On August 5, 2022, Attorney Jeremy Newman was substituted for Attorney Bloodworth as counsel of record in this case.