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DISTRICT III

March 26, 2024

To:

Hon. Thomas J. Walsh
Circuit Court Judge
Electronic Notice

John VanderLeest
Clerk of Circuit Court
Brown County Courthouse
Electronic Notice

Erica L. Bauer
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

Robert Joseph Skenandore
929 Division Street, Apt. 2
Green Bay, WI 54303

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

2021AP1901-CRNM State of Wisconsin v. Robert Joseph Skenandore
2021AP1902-CRNM (L. C. Nos. 2017CF1505, 2018CM175)

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

Counsel for Robert Skenandore has filed a no-merit report concluding that no grounds exist to challenge Skenandore's convictions for disorderly conduct and for operating a motor vehicle while intoxicated (OWI), as a fourth offense and with the alcohol fine enhancer. Skenandore 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 records as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude there is no arguable merit to any issue that could be raised on

appeal. Therefore, we summarily affirm the judgments of conviction. *See* WIS. STAT. RULE 809.21 (2021-22).¹

In Brown County case No. 2017CF1505, the State charged Skenandore with OWI and operating a motor vehicle with a prohibited blood alcohol concentration (PAC), both counts as a fourth offense and with the alcohol fine enhancer.² According to the complaint, law enforcement was dispatched to the scene of a car accident. Witnesses reported that the driver of a Chrysler failed to stop for a red light and struck a Jeep before striking a business located on the corner of the intersection. The driver of the Chrysler, later identified as Skenandore, was found “audibly groaning” but otherwise unresponsive in his vehicle. Law enforcement observed an open bottle of beer on the driver’s side floorboard. After checking Skenandore’s identity with the Wisconsin Department of Motor Vehicles, law enforcement determined that Skenandore had three prior OWI convictions.

Skenandore was transported to the hospital, where a police officer read Skenandore the “Informing the Accused” form and asked whether Skenandore would submit to a blood test. Because Skenandore was “still unresponsive,” law enforcement sought and obtained a search warrant. A subsequent blood test revealed a blood alcohol concentration of .191.

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

² A defendant with two or more prior convictions as counted under WIS. STAT. § 343.307(1) is subject to an alcohol concentration fine enhancer. If the defendant’s alcohol level is .17 to .199, the applicable minimum and maximum fines are doubled. If the defendant’s alcohol level is .20 to .249, minimum and maximum fines are tripled. If the defendant’s alcohol level is .25 or greater, the minimum and maximum fines are quadrupled. *See* WIS. STAT. § 346.65(2)(g).

In Brown County case No. 2018CM175, the State charged Skenandore with one count of disorderly conduct arising from allegations that Skenandore was talking loudly to himself and using profanity at a bar. When bar employees asked Skenandore to leave, he initially walked around the inside of the bar and returned to his seat. Law enforcement arrived at the bar after Skenandore left, but they ultimately located Skenandore standing outside of a different business. Skenandore confirmed to law enforcement that he had been at the bar, though he claimed that three individuals were harassing him there.

Although Skenandore was appointed counsel, he filed a pretrial motion to discharge his attorney and proceed pro se in both cases. After engaging in a colloquy with Skenandore regarding his right to an attorney and his understanding of the difficulties and disadvantages of proceeding pro se, the circuit court granted Skenandore's request. Skenandore subsequently filed several pro se motions in case No. 2017CF1505, including a motion challenging the sufficiency of the search warrant affidavit; motions to dismiss based on a speedy trial violation, an untimely preliminary hearing, a lack of probable cause, and an alleged discovery demand violation; a motion to suppress his blood test results; and a motion to prevent the State from introducing other-acts evidence. Skenandore also moved to collaterally attack his 1990 and 1991 convictions for his first and second impaired driving offenses.

The circuit court denied Skenandore's motions, and Skenandore ultimately sought reappointment of counsel. Although counsel was appointed, Skenandore later moved to again discharge counsel and to proceed pro se. The court granted Skenandore's motion, but it ordered his attorney to serve as standby counsel.

Skenandore ultimately opted to enter no-contest pleas to OWI, as a fourth offense and with the alcohol fine enhancer, and disorderly conduct, without an offer from the State.³ Although Skenandore appeared with standby counsel, he once again confirmed that he was waiving his right to counsel. Out of a maximum total potential sentence of six years and ninety days, the circuit court imposed sentences totaling fifteen months of initial confinement followed by twenty-four months of extended supervision, with the sentences running concurrent to each other but consecutive to any other sentence Skenandore was then serving.⁴ The court also awarded 264 days of sentence credit. Skenandore filed a pro se motion for additional sentence credit. The court denied his motion.

Although the no-merit report does not discuss it, we conclude that any challenge to the denial of Skenandore's motion to prevent the introduction of other-acts evidence would lack arguable merit. At a motion hearing, the State informed Skenandore and the circuit court that it had no intention of moving to introduce other-acts evidence at trial. The court explained that if the matter went to trial and Skenandore opted to testify, Skenandore would be asked only whether he had been convicted of a crime and, if so, how many times.

The no-merit report addresses whether the circuit court properly denied Skenandore's various other pretrial motions; whether Skenandore properly waived his right to counsel; whether

³ The PAC count was dismissed prior to sentencing on the State's motion pursuant to WIS. STAT. § 346.63(1)(c), which provides that if a person is found guilty of both offenses "for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing."

⁴ In addition to the issues discussed by counsel, we note that Skenandore waived the right to personally appear at the sentencing hearing and instead appeared by videoconference due to the COVID-19 restrictions which were then in effect. See *State v. Soto*, 2012 WI 93, ¶46, 343 Wis. 2d 43, 817 N.W.2d 848.

Skenandore knowingly, intelligently and voluntarily entered his no-contest pleas;⁵ whether there is any arguable merit to challenge the sentences imposed; and whether Skenandore is entitled to additional sentence credit. Upon reviewing the records, we agree with counsel's description, analysis, and conclusion that none of these issues have 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. Additionally, with some exceptions not relevant here, Skenandore's valid no-contest pleas waived all nonjurisdictional defects and defenses. *See State v. Kelty*, 2006 WI 101, ¶¶18 & n.11, 34, 294 Wis. 2d 62, 716 N.W.2d 886.

Our independent review of the records discloses no other potential issue for appeal.

Therefore,

IT IS ORDERED that the judgments are summarily affirmed. WIS. STAT. RULE 809.21.

⁵ As the no-merit report acknowledges, the circuit court failed to advise Skenandore of the deportation consequences of his pleas, as mandated by WIS. STAT. § 971.08(1)(c). The no-merit report states that because Skenandore is a United States citizen not subject to deportation, any challenge to his pleas on this basis would lack arguable merit.

IT IS FURTHER ORDERED that Attorney Erica L. Bauer is relieved of her obligation to further represent Robert Skenandore in these matters. *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