



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT III

August 6, 2024

To:

Hon. Michael T. Judge
Circuit Court Judge
Electronic Notice

Trisha LeFebre
Clerk of Circuit Court
Oconto County Courthouse
Electronic Notice

Marcella De Peters
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

Steven M. Schwartz 201586
Stanley Correctional Inst.
100 Corrections Dr.
Stanley, WI 54768

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

2023AP962-CRNM State of Wisconsin v. Steven M. Schwartz (L. C. No. 2021CF211)

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).

Steven M. Schwartz appeals from a judgment, entered on his no-contest pleas, convicting him of one count of operating a motor vehicle while under the influence (OWI) as a fourth offense with a passenger under the age of sixteen and one count of second-degree recklessly endangering safety. Appellate counsel Marcella De Peters has filed a no-merit report, pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2021-22).¹ Schwartz was advised of his right to file a response, but he has not responded. Upon this court's independent review of

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

the record, as mandated by *Anders*, and counsel's report, we conclude there are no issues of arguable merit that could be pursued on appeal. We therefore summarily affirm the judgment.

The Oconto County Sheriff's Department responded to an accident with injuries in the Town of Pensaukee. A vehicle had struck a tree, sustaining "major disabling damage on all areas," and multiple occupants were injured. Schwartz, who had been ejected from the vehicle, was on the ground, complaining of knee and chest pain. Two children were also in the vehicle. Eleven-year-old Brooke,² who had been in the front seat with her seat belt on, said she had hit her head but was not injured. Three-year-old Kyle, who was in a car seat in the back, suffered disfiguring facial injuries.

At the scene, Schwartz told the responding deputy that he handed Brooke his phone and she dropped it, so he was reaching down to pick it up when he swerved off the roadway.³ However, the deputy observed Schwartz's speech to be slow and slurred. Furthermore, the deputy overheard Schwartz tell ambulance personnel that he had about six beers that night. Additionally, the deputy smelled the odor of intoxicants on both Schwartz and in the vehicle. Schwartz refused to consent to a blood draw, so police obtained a warrant and later obtained a blood sample. The testing revealed a blood alcohol concentration of .102%.⁴

Brooke was not able to call 911 due to poor cellular reception, but she was able to get a call through to Schwartz's stepmother, Sharon, who went to the scene with Schwartz's sister,

² This matter involves crime victims. For ease of reading and pursuant to the policy underlying WIS. STAT. RULE 809.86(4), we use pseudonyms instead of the victims' names.

³ Brooke reported that the accident was caused when Schwartz dropped something and was reaching for it.

⁴ Because of prior convictions, Schwartz was subject to a .02% maximum.

Carrie. Sharon, Carrie, and Brooke all told the deputy that Schwartz had been drinking at Sharon's residence before the crash. Sharon and Carrie both reported that Schwartz took a beer with him in the vehicle and that they had pleaded with him not to drive.

Schwartz was charged with OWI causing injury as a second or subsequent offense with a minor child in the vehicle; OWI as a fourth offense with a minor child in the vehicle; two counts of second-degree recklessly endangering safety; failure to install an ignition interlock device; and operating a motor vehicle while revoked.⁵ When Schwartz's blood alcohol results were returned, the State filed an amended Information that added a charge of operating with a prohibited alcohol concentration (PAC) as a fourth offense with a minor child in the vehicle.

Schwartz eventually resolved his case with a plea agreement. The agreement provided that in exchange for Schwartz's no-contest pleas to the noninjury OWI as a fourth offense and one of the reckless endangerment charges, the State would dismiss the OWI causing injury and PAC charges and dismiss but read in the other three offenses. Both sides would be free to argue for the appropriate sentence, and a presentence investigation report would be requested. The circuit court accepted Schwartz's pleas and later sentenced him to consecutive sentences, each comprised of four years' initial confinement followed by four years' extended supervision on each count, with eligibility for the substance abuse program after serving a total of six years' confinement.

Appellate counsel discusses two potential issues in the no-merit report. The first of these is whether Schwartz could withdraw his pleas because they were not knowing, intelligent, and voluntary. When accepting a defendant's guilty or no-contest pleas, a circuit court must engage

⁵ At sentencing, Schwartz acknowledged that he has never had a driver's license.

the defendant in a colloquy and fulfill several duties set forth by WIS. STAT. § 971.08 and judicial mandates, in order to ensure that the pleas are constitutionally sound. *See State v. Howell*, 2007 WI 75, ¶26, 301 Wis. 2d 350, 734 N.W.2d 48; *see also State v. Bangert*, 131 Wis. 2d 246, 261-62, 389 N.W.2d 12 (1986); *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. Our review of the record—including the plea questionnaire and waiver of rights form, jury instructions for second-degree recklessly endangering safety, element list for OWI, and plea hearing transcript—confirms that the court generally complied with the prescribed obligations for taking guilty or no-contest pleas.⁶ Thus, we agree with appellate counsel that there is no arguable merit to a claim for plea withdrawal.

The other issue appellate counsel addresses is whether the circuit court properly exercised its sentencing discretion. *See State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197; *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Our review of the record confirms that the court appropriately considered relevant sentencing objectives and factors, and it did not discuss any improper factors. The consecutive sentences totaling sixteen years of imprisonment are well within the twenty-two-year range authorized by law, *see State v. Scaccio*, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449, and are 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). Thus, this court is satisfied that the no-merit report properly analyzes this issue as without arguable merit.

⁶ The circuit court neglected to provide Schwartz with the immigration warning required by WIS. STAT. § 971.08(1)(c). However, in order to obtain relief because of that particular omission, a defendant must show that the plea is likely to result in deportation, exclusion from admission, or denial of naturalization. *See State v. Negrete*, 2012 WI 92, ¶26, 343 Wis. 2d 1, 819 N.W.2d 749. In the no-merit report, counsel represents that Schwartz is a United States citizen. Accordingly, there is no arguable merit to a claim for plea withdrawal based on this omission from the plea colloquy.

Our independent review of the record reveals no other potential issues of arguable merit.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Marcella De Peters is relieved of further representation of Steven M. Schwartz in this matter. *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