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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](http://www.wicourts.gov)

**DISTRICT II**

October 16, 2013

To:

Hon. Thomas R. Wolfgram  
Circuit Court Judge  
Ozaukee County Circuit Court  
1201 South Spring Street  
Port Washington, WI 53074-0994

Marylou Mueller  
Clerk of Circuit Court  
Ozaukee County Circuit Court  
1201 South Spring Street  
Port Washington, WI 53074-0994

Adam Y. Gerol  
District Attorney  
P.O. Box 994  
Port Washington, WI 53074-0994

Christopher M. Glinski  
704 Park Ave.  
Racine, WI 53403-1234

Gregory M. Weber  
Assistant Attorney General  
P.O. Box 7857  
Madison, WI 53707-7857

Alexis T. West  
Menomonee Falls Health Care  
N84 W17049 Menomonee Ave.  
Menomonee Falls, WI 53051

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

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2013AP183-CRNM      State of Wisconsin v. Alexis T. West (L.C. # 2011CM337)

Before Neubauer, P.J.<sup>1</sup>

Alexis West appeals from a judgment convicting him of operating while intoxicated (second offense) contrary to WIS. STAT. § 346.63(1)(a) (2011-12). West's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). West received a copy of the report and filed a response. After we considered the report, West's response and independently reviewed the record as mandated by *Anders* and RULE

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

809.32, we concluded that an issue with arguable merit was present relating to the entry of West's guilty plea.<sup>2</sup> In response to our order, West advises that he will not pursue the plea colloquy defects. Accordingly, we summarily affirm the judgment because there are no issues that would have arguable merit for appeal. WIS. STAT. RULE 809.21.

The no-merit report addresses the following possible appellate issues: (1) whether West's guilty plea was knowingly, voluntarily and intelligently entered and (2) whether the circuit court erroneously denied West's motion to suppress for lack of a reasonable basis to stop his vehicle. The no-merit report fails to discuss the exercise of sentencing discretion.<sup>3</sup>

Our review of the record revealed arguable defects in the plea colloquy: the circuit court did not review the constitutional rights waived by the plea, the elements of the crime, or West's education and general comprehension. As required by an order of this court, West consulted with counsel and informed the court via affidavit that he waives the plea colloquy defects because he understood the information the circuit court failed to address during the colloquy.

With the exception of the plea colloquy defects waived by West, the record discloses that West's guilty plea was knowingly, voluntarily and intelligently entered, *State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986), and that the plea had a factual basis, *State v.*

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<sup>2</sup> At the plea colloquy, the plea agreement recited on the record required a no contest plea. When the circuit court asked for West's plea, he pled "guilty." The judgment of conviction reflects a guilty plea.

<sup>3</sup> A no-merit report is supposed to "identify anything in the record that might arguably support the appeal and discuss the reasons why each identified issue lacks merit." WIS. STAT. RULE 809.32(1)(a) (2011-12). Counsel was obligated to address possible appellate issues arising from the circuit court proceedings, including sentencing. Future no-merit reports may be rejected if they do not fulfill the purpose of RULE 809.32.

*Harrington*, 181 Wis. 2d 985, 989, 512 N.W.2d 261 (Ct. App. 1994). Additionally, the plea questionnaire and waiver of rights form West signed is competent evidence of a knowing and voluntary plea. *State v. Moederndorfer*, 141 Wis. 2d 823, 827-29, 416 N.W.2d 627 (Ct. App. 1987). Although a plea questionnaire and waiver of rights form may not be relied upon as a substitute for a substantive in-court personal colloquy, it may be referred to and used at the plea hearing to ascertain the defendant's understanding and knowledge at the time a plea is taken. *State v. Hoppe*, 2009 WI 41, ¶¶30-32, 317 Wis. 2d 161, 765 N.W.2d 794. There would be no arguable merit to a challenge to the entry of West's guilty plea.

With regard to the sentence, the record reveals that the sentencing court's discretionary decision had a "rational and explainable basis." *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (citation omitted). At sentencing, West admitted that he should not have been driving and he took responsibility for the crime. The court noted West's high blood alcohol content (.26) and that he had a prior operating while intoxicated conviction. We conclude that the circuit court adequately exercised its discretion in sentencing West to a ninety-day jail term, a fine and license revocation.

The no-merit report discusses the circuit court's denial of West's motion to suppress. West argued in the circuit court that he was illegally stopped, and he raises this issue in his response to counsel's no-merit report. A traffic stop is generally reasonable if the officer had probable cause to reasonably suspect that a traffic violation has occurred. *State v. Popke*, 2009 WI 37, ¶11, 317 Wis. 2d 118, 765 N.W.2d 569. We will uphold the circuit court's findings of fact unless they are clearly erroneous. *Id.*, ¶10.

In his response to counsel's no-merit report, West argues that the police officer could not have seen the type of driving he claimed to have seen on the night he stopped West. The circuit court watched the video from the officer's dash cam and found that it depicted the traffic violations which were the basis for the stop. Based on the video and the officer's testimony, the court found that the police officer witnessed the following violations: West drove down the center of the road after he left a tavern, West drove on the wrong side of the road,<sup>4</sup> and West made turns without signaling. Notwithstanding West's complaints about the quality of the dash cam video, the circuit court found that the officer's observations about West's driving were credible and concluded that the officer had a reasonable basis to stop West's vehicle. These credibility determinations were for the circuit court. *State v. Peppertree Resort Villas, Inc.*, 2002 WI App 207, ¶19, 257 Wis. 2d 421, 651 N.W.2d 345. Because the circuit court's findings of fact are not clearly erroneous, a challenge to the denial of West's motion to suppress would lack arguable merit.

In addition to the issues discussed above, we have independently reviewed the record. Our independent review of the record did not disclose any potentially meritorious issue for appeal. Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report, affirm the judgment of conviction, and relieve Attorney Christopher Glinski of further representation of West in this matter.

Upon the foregoing reasons,

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<sup>4</sup> In his response, West explains that he did not signal for turns because he did not know that his signal was not functioning. He further claims that he "was on the left side of Green Bay Rd. because I needed to turn east into my residence which was less than 2 blocks away." Anticipating a turn is not cause to drive on the wrong side of the road.

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

IT IS FURTHER ORDERED that Attorney Christopher Glinski is relieved of further representation of Alexis West in this matter.

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*