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**DISTRICT III**

November 19, 2013

To:

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Circuit Court Judge, Br. 1  
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You are hereby notified that the Court has entered the following opinion and order:

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2013AP1265-CRNM      State of Wisconsin v. Peter L. Heywood (L.C. # 2012CF326)

Before Hoover, P.J., Mangerson and Stark, JJ.

Counsel for Peter Heywood has filed a no-merit report concluding there is no arguable basis for Heywood to withdraw his guilty plea or to challenge the sentence imposed for operating a vehicle under the influence of an intoxicant, tenth or greater offense. Heywood was advised of his right to respond to the report and has not responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude there is no arguable basis for appeal.

Pursuant to a plea agreement, Heywood entered a guilty plea to the charge and the parties jointly recommended four years' initial confinement and five years' extended supervision. They also jointly recommended eligibility for the substance abuse program and agreed that Heywood was entitled to forty days' jail credit. The court accepted the plea and imposed the jointly recommended sentence.

The record discloses no arguable manifest injustice upon which Heywood could withdraw his guilty plea. See *State v. Duychak*, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). The court's colloquy, supplemented by a plea questionnaire and waiver of rights form, established the plea was knowingly, voluntarily and intelligently entered. See *State v. Bangert*, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986). The court ascertained that Heywood had a high school diploma, could read and write, and understood English. He was not under the influence of any alcohol or medication, and his guilty plea was not the product of any threats or promises other than the plea agreement. Although the court did not describe one of the elements of the offense, that Heywood drove on a highway or public road, Heywood admitted driving on a city street. Heywood confirmed that he was convicted of operating a vehicle while under the influence of an intoxicant ten times since January 1, 1989. The court informed Heywood of the maximum and minimum penalties. The court did not inform Heywood that it was not bound by the plea agreement as required by *State v. Hampton*, 2004 WI 117, ¶20, 274 Wis. 2d 379, 683 N.W.2d 14. However, that error was harmless because the court imposed the jointly recommended sentence. See *State v. Johnson*, 2012 WI App 21, ¶1, 339 Wis. 2d 421, 811 N.W.2d 441. Heywood cannot attack a jointly recommended sentence on appeal. See *State v. Scherreiks*, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989).

Our independent review of the record discloses no other potential issue for appeal. Therefore,

IT IS ORDERED that the judgment is summarily affirmed. WIS. STAT. RULE 809.21 (2011-12).

IT IS FURTHER ORDERED that attorney Eileen Hirsch is relieved of her obligation to further represent Heywood in this matter. WIS. STAT. RULE 809.32(3) (2011-12).

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