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**DISTRICT III**

February 19, 2014

To:

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Circuit Court Judge  
Outagamie County Courthouse  
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Appleton, WI 54911

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

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2013AP2310-CRNM      State of Wisconsin v. Michael R. Yealey (L.C. # 2012CF821)

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

Counsel for Michael Yealey filed a no-merit report concluding there is no arguable basis for Yealey to withdraw his no contest plea or challenge the sentence imposed for fifth or sixth offense operating while intoxicated.<sup>1</sup> Yealey was advised of his right to respond to the report

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<sup>1</sup> The complaint alleged a fifth offense OWI. However, the judgment of conviction describes this offense as sixth offense OWI. Because Yealey was sentenced in this case before his sentence in Brown County (case No. 2012CF1428), this offense should be listed as the fifth offense. The Brown County case is listed as his fifth offense on CCAP. Because fifth and sixth offense are the same crime under WIS. STAT. § 346.65(2)(am)5. (2011-12), there is no practical point in amending the judgments in the two cases.

All references to the Wisconsin Statutes are to the 2011-12 version.

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.

The complaint alleges police were called regarding an intoxicated man who had walked into a residence and then exited and was searching through vehicles. Police made contact with Yealey, who was sitting in the driver's seat of a vehicle. An officer noted a strong odor of intoxicants. Shortly thereafter, the officer saw the vehicle pull out of the driveway. The officer stopped the vehicle and determined it was being driven by Yealey, who had a revoked driver's license. Yealey informed the officer that he was a seasoned driver who could drive well while under the influence. Yealey failed a field sobriety test and a blood draw was performed, indicating a blood alcohol content of 0.213 percent.

In return for Yealey's no contest plea to the charge of operating while intoxicated, fifth offense, the State agreed to dismiss a general repeater allegation and a charge of driving after revocation, and agreed to recommend twenty-four to twenty-eight months' initial confinement and three years' extended supervision. The court accepted the no contest plea and sentenced Yealey to three years' initial confinement and three years' extended supervision.

The record discloses no arguable manifest injustice upon which Yealey could withdraw his no contest 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, reminded Yealey of the constitutional rights he waived by pleading no contest, the elements of the offense and the potential penalties. As required by *State v. Hampton*, 2004 WI 117, ¶20, 274 Wis. 2d 379, 683 N.W.2d 14, the court informed Yealey that it was not bound by the parties' sentence recommendations. The record shows the plea was knowingly, voluntarily and

intelligently entered. *See State v. Bangert*, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986). Entry of a valid no contest plea constitutes a waiver of all nonjurisdictional defects and defenses. *Id.* at 293.

The record also discloses no arguable basis for challenging the sentence. The court appropriately considered the seriousness of the offense, Yealey's character and the need to protect the public. *See State v. Harris*, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). The court appropriately faulted Yealey for claiming he could drive well while under the influence of alcohol, and for having been revoked from supervision seven times. The court considered no improper factors and the sentence is not arguably so excessive as to shock public sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

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.

IT IS FURTHER ORDERED that attorney Andrew Hinkel is relieved of his obligation to further represent Yealey in this matter. WIS. STAT. RULE 809.32(3).

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