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/IV

July 15, 2014

To:

Hon. Howard W. Cameron, Jr.
Circuit Court Judge
1101 Carmichael Road
Hudson, WI 54016

Lori N. Meyer
Clerk of Circuit Court
St. Croix County Courthouse
1101 Carmichael Road
Hudson, WI 54016

Eric G. Johnson
District Attorney
1101 Carmichael Road
Hudson, WI 54016

William E. Schmaal
Asst. State Public Defender
P.O. Box 7862
Madison, WI 53707-7862

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

Justin Arthur Severson 292562
Oshkosh Corr. Inst.
P.O. Box 3310
Oshkosh, WI 53903-3310

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

2013AP486-CRNM State of Wisconsin v. Justin Arthur Severson (L.C. #2011CF231)

Before Lundsten, Sherman and Kloppenburg, JJ.

Justin Severson appeals a judgment convicting him, after entry of a guilty plea, of operating while intoxicated (OWI) as a seventh offense and obstructing a police officer, contrary to WIS. STAT. §§ 346.63(1)(a) and 946.41(1) (2011-12).[1] Attorney William Schmaal has filed a no-merit report seeking to withdraw as appellate counsel. WIS. STAT. RULE 809.32; *see also* ***Anders v. California***, 386 U.S. 738, 744 (1967); ***State ex rel. McCoy v. Wisconsin Court of***

[1] All further references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

Appeals, 137 Wis. 2d 90, 403 N.W.2d 449 (1987), *aff'd*, 486 U.S. 429 (1988). The no-merit report addresses the validity of the plea and sentence. Severson was sent a copy of the report, and has filed a response in which he argues that he was sentenced twice for an OWI incident that occurred on April 26, 2011. Upon reviewing the entire record, as well as the no-merit report and response, we conclude that there are no arguably meritorious appellate issues.

First, we see no arguable basis for plea withdrawal. In order to withdraw a plea after sentencing, a defendant must either show that the plea colloquy was defective in a manner that resulted in the defendant actually entering an unknowing plea, or demonstrate some other manifest injustice such as coercion, the lack of a factual basis to support the charge, ineffective assistance of counsel, or failure by the prosecutor to fulfill the plea agreement. ***State v. Bangert***, 131 Wis. 2d 246, 255, 389 N.W.2d 12 (1986); ***State v. Krieger***, 163 Wis. 2d 241, 249-51 and n.6, 471 N.W.2d 599 (Ct. App. 1991). There is no indication of any such defect here.

Severson entered a guilty plea pursuant to a negotiated plea agreement that was presented in open court. In exchange for Severson's plea, the State agreed to dismiss three of the five counts alleged in the complaint. The circuit court conducted a standard plea colloquy, inquiring into Severson's ability to understand the proceedings and the voluntariness of his plea decisions, and further exploring his understanding of the nature of the charges, the penalty ranges and other direct consequences of the pleas, and the constitutional rights being waived. *See* WIS. STAT. § 971.08; ***State v. Hoppe***, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794; and ***Bangert***, 131 Wis. 2d at 266-72. The court made sure Severson understood that it would not be bound by any sentencing recommendations. In addition, Severson provided the court with a signed plea questionnaire. Severson indicated to the court that he understood the information explained on

that form, and is not now claiming otherwise. *See* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987).

Severson asserts in his response to counsel's no-merit report that a single OWI incident was counted twice for the purposes of calculating his prior OWI offenses. The record reflects that, prior to when Severson entered his plea, the court held a status conference at which this issue was discussed. Severson was present with his counsel at that conference. Severson's counsel and the prosecutor stated on the record that they both would review Severson's driving records. The court stated that, if the parties were not able to resolve the issue after reviewing Severson's records, then Severson's counsel could file a motion to put the State to its proof. No such motion was filed, and the State and Severson subsequently reached an agreement, part of which was that Severson would plead guilty to OWI as a seventh offense. Severson did so, and we find nothing in the record that would indicate that his plea lacked a factual basis or that it was not entered freely, knowingly, and voluntarily. To the contrary, Severson's counsel confirmed at the plea hearing that the facts alleged in the complaint on counts one and five provided a sufficient factual basis for the pleas, and confirmed that Severson had six prior OWI offenses.

There is nothing in the record to suggest that counsel's performance was in any way deficient, and Severson has not alleged any facts that would give rise to a manifest injustice. Therefore, Severson's plea was valid and operated to waive all nonjurisdictional defects and defenses, aside from any suppression ruling. ***State v. Kelty***, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886; WIS. STAT. § 971.31(10).

There also would be no arguable merit to an argument on appeal that the circuit court improperly exercised its sentencing discretion. The court considered the seriousness of the

offenses, Severson's criminal history and rehabilitative needs, and the need for protection of the public. The court imposed a less-than-maximum sentence of three years of initial confinement and three years of extended supervision on count one and a concurrent sentence of nine months of confinement on count five. Under these circumstances, it cannot reasonably be argued that the sentences imposed are so excessive as to shock public sentiment. ***State v. Grindemann***, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. *See* ***State v. Allen***, 2010 WI 89, ¶¶81-82, 328 Wis. 2d 1, 786 N.W.2d 124. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of ***Anders*** and WIS. STAT. RULE 809.32.

Accordingly,

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

IT IS FURTHER ORDERED that William Schmaal is relieved of any further representation of Justin Severson in this matter pursuant to WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals