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

November 17, 2014

To:

Hon. David G. Miron
Circuit Court Judge
Marinette County Courthouse
1926 Hall Avenue
Marinette, WI 54143

Linda Dumke-Marquardt
Clerk of Circuit Court
Marinette County Courthouse
1926 Hall Avenue
Marinette, WI 54143

Allen R. Brey
District Attorney
1926 Hall Avenue
Marinette, WI 54143-1717

Daniel Goggin II
Goggin & Goggin
P.O. Box 646
Neenah, WI 54957-0646

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

Jerry M. Beaudo 601562
Dodge Corr. Inst.
P.O. Box 700
Waupun, WI 53963-0700

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

2013AP1788-CRNM State of Wisconsin v. Jerry M. Beaudo (L.C. # 2012CF179)

Before Lundsten, Sherman and Kloppenburg, JJ.

Jerry Beaudo appeals a judgment convicting him, after a no contest plea, of operating under the influence of an intoxicant, as a tenth offense or greater, contrary to WIS. STAT. §§ 346.63(1)(a) (2011-12).[1] Attorney Daniel Goggin II 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); and ***State ex rel. McCoy v. Wisconsin Court of Appeals***, 137 Wis. 2d 90,

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

403 N.W.2d 449 (1987). The no-merit report addresses the validity of the plea and sentence. Beaudo was sent a copy of the report, but has not filed a response. Upon reviewing the entire record, as well as the no-merit report, 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, 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.

Beaudo entered a no contest plea pursuant to a negotiated plea agreement that was presented in open court. In exchange for Beaudo's plea, the State agreed to dismiss the other count charged, operating a motor vehicle after revocation. The State also agreed to recommend a sentence of ten years, which consisted of five years of initial confinement and five years of extended supervision, and a fine of $1,600 plus costs. Beaudo was free to argue as to disposition.

The circuit court conducted a standard plea colloquy, inquiring into Beaudo's ability to understand the proceedings and the voluntariness of his plea decisions, and further exploring Beaudo's 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 Beaudo understood that it would not be bound by any sentencing recommendations. In addition, Beaudo provided the court with a signed plea questionnaire. Beaudo indicated to the court that he understood the information explained on that form, and is not now claiming otherwise. *See, e.g.,* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987).

The facts alleged in the complaint—namely, that Beaudo operated a motor vehicle while under the influence of an intoxicant and that he had ten or more prior offenses—provided a sufficient factual basis for the plea. Beaudo admitted to each of the prior offenses on the record in open court. He indicated satisfaction with his attorney, and there is nothing in the record to suggest that counsel's performance was in any way deficient. Beaudo has not alleged any other facts that would give rise to a manifest injustice. Therefore, his 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.

A challenge to Beaudo's sentence would also lack arguable merit. Our review of a sentencing determination begins with a "presumption that the [circuit] court acted reasonably" and it is the defendant's burden to show "some unreasonable or unjustifiable basis in the record" in order to overturn it. ***State v. Krueger***, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984).

The court sentenced Beaudo to seven years and six months of initial confinement and five years of extended supervision, which was the maximum sentence for the offense. *See* WIS. STAT. §§ 346.65(2)(am)7 (classifying OWI as a 10th offense or more as a Class F felony); 973.01(2)(b)6m and (d)4 (providing maximum terms of seven and a half years of initial

confinement and five years of extended supervision for a Class F felony). The court also awarded 136 days of sentence credit and ordered fines and costs in the amount of $2,715. The judgment of conviction reflects that the court determined that the defendant was not eligible for the challenge incarceration program, the earned release program, or a risk reduction sentence. The record shows that Beaudo was afforded an opportunity to comment on the PSI, which he did through his counsel, and to address the court personally prior to sentencing.

In imposing the maximum sentence authorized by law, the court considered the standard sentencing factors and explained their application to this case. *See generally* ***State v. Gallion***, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. Regarding the severity of the offense, the court discussed the danger that drunk driving presented to others. With respect to Beaudo's character, the court discussed Beaudo's long history of drunk driving offenses, dating back to 1990, and the fact that he had not changed his behavior. The court identified the primary goal of sentencing in this case as protecting the community and concluded that a prison term was necessary to do so. Under these circumstances, it cannot reasonably be argued that Beaudo's sentence is so excessive "as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances." *See* ***State v. Grindemann***, 2002 WI App 106, ¶31, 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 Daniel Goggin II is relieved of any further representation of Jerry Beaudo in this matter pursuant to WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals