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DISTRICT III/II

December 17, 2014

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

2014AP1510-CRNM State of Wisconsin v. Norbert B. Polar (L.C. #2012CF74)

Before Brown, C.J., Neubauer, P.J. and Reilly, J.

Norbert B. Polar appeals from a judgment convicting him after a jury trial of homicide by intoxicated use of a vehicle, homicide by use of a vehicle with a prohibited alcohol content (PAC), knowingly operating while suspended and causing great bodily harm, fifth-offense operating while intoxicated (OWI), and fifth-offense operating with a PAC. Polar's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2011-12)[1] and ***Anders v.***

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

California, 386 U.S. 738 (1967). Polar was provided a copy of the report and has filed a response. Upon consideration of the no-merit report and the response and our independent review of the record as mandated by ***Anders*** and RULE 809.32, we conclude there are no issues which would have arguable merit for appeal. We summarily affirm the judgment, *see* WIS. STAT. RULE 809.21, accept the no-merit report, and relieve Attorney William E. Schmaal of further representing Polar in this matter.

The no-merit report first considers whether the verdicts were not supported by sufficient evidence. Counsel's analysis is correct and we agree that such a contention would be without merit. In reviewing the sufficiency of the evidence to support a conviction, "an appellate court may not substitute its judgment for that of the trier of fact unless the evidence, viewed most favorably to the [S]tate and the conviction, is so lacking in probative value and force" that no reasonably acting trier of fact could have found guilt beyond a reasonable doubt. ***State v. Poellinger***, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990). It is for the jury to decide credibility issues, to weigh the evidence, and to resolve conflicts in the testimony. ***State v. Gomez***, 179 Wis. 2d 400, 404, 507 N.W.2d 378 (Ct. App. 1993).

The evidence was as follows. A severely injured pedestrian was found on Highway 55 in Mole Lake. Polar's nephew acknowledged that Polar, who was so drunk he could barely walk, gave him a ride to a Mole Lake convenience store and then to the nephew's friend's house. The store's surveillance video footage showed Polar's truck with no visible damage to its hood. Surveillance video footage from the nearby Mole Lake casino taken shortly thereafter showed Polar's truck with a single occupant enter the parking lot with a dent in its hood. The victim was found lying on Highway 55 about that time. Paint chips matching Polar's truck and pieces of plastic consistent with a vehicle "bug visor" were found near him. Law enforcement later found

an intoxicated Polar in his truck stopped along Highway 55. The paint chips and plastic matched damage observed on Polar's truck. Polar stipulated to four prior OWIs and that he knowingly operated a vehicle while his license was suspended. His blood alcohol, which should not have exceeded 0.02%, was at least 0.21%. The victim died of multiple blunt force trauma consistent with injuries to a pedestrian struck by a motor vehicle. Sufficient evidence supports the verdicts.

The no-merit report also considers the trial court's exercise of discretion in sentencing Polar. The court sentenced Polar to a total of seven years' initial confinement and eight years' extended supervision. Sentencing is left to the discretion of the trial court, and appellate review is limited to determining whether that discretion was erroneously exercised. ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. The court must address sentencing objectives that include the protection of the public, punishment and rehabilitation of the defendant, and deterrence, ***id.***, ¶40, and the primary sentencing factors, the gravity of the offense, the character of the offender, and the need to protect the public, ***State v. Spears***, 227 Wis. 2d 495, 507, 596 N.W.2d 375 (1999). The weight to be given the various factors is within the court's discretion. ***Cunningham v. State***, 76 Wis. 2d 277, 282, 251 N.W.2d 65 (1977). The court must provide a "rational and explainable basis" for the sentence it imposes to allow this court to ensure that discretion in fact was exercised. ***Gallion***, 270 Wis. 2d 535, ¶¶39, 76 (citation omitted). Unless the defendant can demonstrate otherwise from the record, we presume a sentence is reasonable. ***State v. Mosley***, 201 Wis. 2d 36, 43, 547 N.W.2d 806 (Ct. App. 1996). Our review satisfies us that the sentencing court thoroughly applied the proper principles in imposing the sentence that it did. We agree that no basis exists to disturb the sentence.

Polar's response alleges an infringment on tribal sovereignty. He contends that law enforcement needed to get a release from the Sokaogon Chippewa Community, or Mole Lake

tribe, before obtaining the surveillance camera footage from the convenience store and casino. This claim has no arguable appellate merit.

"[S]tate laws may be applied to tribal Indians on their reservations if Congress has expressly so provided." ***California v. Cabazon Band of Mission Indians***, 480 U.S. 202, 207 (1987), *superseded by statute on other grounds* (regulating gaming), ***Michigan v. Bay Mills Indian Cmty.***, 134 S.Ct. 2024, 2034 (2014). Through Pub. L. 280 (1953), Congress has expressly given certain states, including Wisconsin, jurisdiction over criminal offenses committed by or against Native Americans in "Indian Country"[2] "to the same extent that such State … has jurisdiction over offenses committed elsewhere within the State." *See* 18 U.S.C. § 1162(a) (2010). No release of tribal sovereignty was necessary. Our independent review of the record discloses no other potential issues for appeal. Therefore,

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

IT IS FURTHER ORDERED that Attorney William E. Schmaal is relieved from further representing Polar in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals

[2] "Indian country," defined in 18 U.S.C. § 1151, includes "all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation" and applies to questions of both criminal and civil jurisdiction. ***DeCoteau v. District Cnty. Court***, 420 U.S. 425, 427 n.2 (1975).