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

January 27, 2015

To:

Hon. Kendall M. Kelley
Circuit Court Judge
Brown County Courthouse
100 S. Jefferson St, PO Box 23600
Green Bay, WI 54305-3600

John VanderLeest
Clerk of Circuit Court
Brown County Courthouse
P.O. Box 23600
Green Bay, WI 54305-3600

David L. Lasee
District Attorney
P.O. Box 23600
Green Bay, WI 54305-3600

Steven D. Phillips
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

Nicholas R. Roedell
Manitowoc County Jail
1025 S 9th Street
Manitowoc, WI 54220-5340

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

2014AP1976-CRNM State of Wisconsin v. Nicholas R. Roedell (L. C. #2012CT1670)

Before Stark, J.[1]

Counsel for Nicholas Roedell filed a no-merit report concluding there is no arguable basis for Roedell to withdraw his no-contest pleas or challenge the sentences imposed for third-offense driving while intoxicated and operating a vehicle after revocation. Roedell was advised of his right to respond to the report and has not responded. Upon this court's independent review

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

of the record as mandated by ***Anders v. California***, 386 U.S. 738 (1967), no issue of arguable merit appears.

Roedell was charged with third-offense driving while intoxicated, third-offense driving with a prohibited alcohol concentration, operating a vehicle after revocation and failure to install an ignition interlock device. Roedell filed a motion to suppress evidence, alleging the officer had insufficient basis for stopping his vehicle. After the court denied the motion, pursuant to a plea agreement, Roedell entered no-contest pleas to third-offense operating a vehicle while intoxicated and operating after revocation. The other charges were dismissed. The court imposed concurrent jail terms totaling eighty days with forty days' sentence credit, imposed a fine totaling $776 plus costs, ordered Roedell to pay the cost of the blood draw, revoked his license for twenty-seven months, and further ordered Roedell to undergo an alcohol and other drug abuse assessment and follow through with treatment.

The record establishes no arguable basis for Roedell to challenge the order denying his motion to suppress evidence. State patrol trooper Colin Brown testified he observed Roedell's oncoming vehicle after dark and noted the driver-side headlight was "defective, burnt out." His squad car was equipped with a video camera, and the recording of the stop was reviewed by the court. Roedell's father, the owner of the vehicle, testified that when he retrieved the car hours after his son's arrest, he could see the car's headlights reflecting on objects in front of it, and both headlights were working. The court, relying on the video recording, found the headlight in question was not burned out. However, the driver-side headlight did not properly illuminate the road and was either misaligned or much dimmer than the passenger-side headlight. Because the light was misaligned, Brown had the right to stop the vehicle based on the violation of WIS. STAT. § 347.06(1), (3) and WIS. STAT. § 347.10(2)(b). Brown had the right to stop the vehicle

even if he was mistaken in his belief that the headlight was burned out. An officer is not required to cite the correct statutory provisions, or even the correct legal principle for making the stop, as long as the facts known to him objectively would lead a reasonable officer to believe that guilt is more than a possibility. ***State v. Popke***, 2009 WI 37, ¶14, 317 Wis. 2d 118, 765 N.W.2d 569; ***State v. Repenshek***, 2004 WI App 229, ¶¶10-12, 277 Wis. 2d 780, 691 N.W.2d 369.

The record discloses no arguable manifest injustice upon which Roedell could withdraw his no-contest pleas. *See* ***State v. Duychak***, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). The court's colloquy, aided by a Plea Questionnaire/Waiver of Rights form with an attached elements sheet, informed Roedell of the constitutional rights he waived by pleading no contest, the elements of the offenses and the potential penalties. The court established Roedell's education and general comprehension. He was thirty years old, had two to three years of college, and expressed no difficulty understanding the proceedings. Roedell confirmed that the plea was not the product of any threats or promises other than the plea agreement. As required by ***State v. Hampton***, 2004 WI 107, ¶2, 274 Wis. 2d 379, 683 N.W.2d 14, the court informed Roedell that it was not bound by the plea agreement. Roedell stipulated to the facts alleged in the complaint, including two prior convictions for driving while intoxicated and a blood test that revealed a blood alcohol concentration of .119%. With one exception, the court followed the procedure for accepting no-contest pleas set out in ***State v. Bangert***, 131 Wis. 2d 246, 260-62, 389 N.W.2d 12 (1986). The exception is that the court failed to advise Roedell of the possible deportation consequences that might arise if he was not a United States citizen. Because Roedell is a citizen, that omission was harmless. *See* WIS. STAT. § 805.18.

The record discloses no arguable basis for challenging the sentences. Any issue regarding the propriety of the jail terms is moot because Roedell has already served those terms.

State v. Hungerford, 76 Wis. 2d 171, 179, 251 N.W.2d 9 (1977). In addition, the eighty-day sentence is not arguably excessive. The court imposed the minimum fine for third-offense drunk driving. *See* WIS. STAT. § 346.65(2)(am)3. The reimbursement for the blood draw was authorized by WIS. STAT. § 973.06(1)(j). The twenty-seven-month revocation of Roedell's license was authorized by WIS. STAT. § 343.301(1g)(b)4. The court also properly restricted Roedell's operating privileges to vehicles that are equipped with an ignition interlock device. *See* WIS. STAT. §§ 343.301(1g)(b)2. and 343.301(2m).

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 Steven Phillips is relieved of his obligation to further represent Roedell in this matter. WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals