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DISTRICT III

April 28, 2015

To:

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Circuit Court Judge
Door County Justice Center
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Todd Z. Medd
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You are hereby notified that the Court has entered the following opinion and order:

2014AP104-CRNM State v. Todd Z. Medd (L. C. No. 2013CF33)

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

Counsel for Todd Medd has filed a no-merit report concluding there is no basis to challenge Medd's conviction for sixth-offense operating while under the influence, with an alcohol concentration enhancer. Medd was informed of his right to respond 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 merit to any issue that could be raised on appeal and summarily affirm.

At 1:30 a.m. on the morning of March 9, 2013, Sturgeon Bay police officer Jason Albertson observed a vehicle stop at a stop sign for a very long time when there were no other vehicles impeding it. The vehicle then proceeded, weaving in its lane of traffic and almost hit snow banks along the curb several times. The vehicle then pulled out in front of another squad car that was approaching, causing the officer in that vehicle to apply heavy braking in order to avoid a possible collision. The suspect vehicle then made a very wide turn, crossing over the double line. Albertson activated his emergency lights and siren briefly to initiate a traffic stop. When the vehicle failed to stop, the officer left the siren on and continued to follow the vehicle. After going some distance further, the vehicle stopped.

Albertson made contact with the vehicle and identified Medd as the driver. The officer observed bloodshot/watery eyes, a strong odor of intoxicants, and indicated that Medd had a "very blank stare" and seemed "dazed and confused." When asked if he had been drinking, Medd started mumbling, and Albertson "had a very hard time making out what he even said." After asking him again, Medd admitted he had been drinking earlier.

Albertson determined that it was "obvious that [Medd] had been drinking," and he asked Medd to exit the vehicle. Medd was very unsteady and visibly swaying back and forth, "barely able to keep his balance." Medd was so unbalanced and falling over during attempts at field sobriety tests that Albertson stopped the roadside testing for fear that Medd would hurt himself. Medd then voluntarily submitted to a preliminary breath test, which revealed a blood alcohol content of .177.

After placing Medd under arrest, a search of Medd's vehicle found five empty sixteen-ounce cans of Mike's Harder Blueberry Lemonade, a beverage containing alcohol, and one full

can. The officer transported Medd to the hospital and read him the "Informing the Accused" form, but Medd refused to submit to an evidentiary blood test. A forced blood draw was done, which indicated a blood alcohol concentration of .230 grams per 100 milliliters.

A suppression motion based on the warrantless blood draw, pursuant to ***Missouri v. McNeely***, 133 S. Ct. 1552 (2013), was denied after a hearing. Defense counsel requested an opportunity for briefing, which the court allowed. In a written order, the court again denied the motion to suppress. Medd then pled no contest to count one of the amended Information, sixth-offense OWI with alcohol concentration enhancer. The court adopted a joint agreement for eighteen months' initial confinement and eighteen months' extended supervision.

There is no arguable merit to any WIS. STAT. § 971.31(10) (2013-14), challenge to the circuit court's suppression ruling. The circuit court denied the motion on the grounds that the arresting officer acted in good-faith reliance on established precedent at the time the blood draw was conducted. We recently confirmed that the good-faith exception to the exclusionary rule applies in cases that were pending when ***McNeely*** was decided. *See* ***State v. Reese***, 2014 WI App 27, ¶¶19-22, 353 Wis. 2d 266, 844 N.W.2d 396. ***McNeely*** was decided on April 17, 2013, and the blood draw in this case was on March 9, 2013. Accordingly, there is no arguable merit to any challenge to the court's denial of the suppression motion.

There is no manifest injustice upon which Medd could withdraw his plea. *See* ***State v. Duychak***, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). The court's colloquy, buttressed by the plea questionnaire and waiver of rights form, informed Medd of the constitutional rights he waived by pleading no contest, the elements of the offenses, and potential deportation consequences of his plea. Medd conceded the criminal complaint and attached

police reports provided an adequate factual basis supporting the conviction, and Medd also admitted to five prior OWI offenses. Medd was informed of the maximum potential penalty for sixth-offense OWI, but the court did not specifically inform Medd of the consequences of the alcohol concentration enhancer, or that it was not bound by the parties' agreement and could impose the maximum allowable penalty. However, that provides no grounds for relief as the court imposed the jointly recommended sentence, and Medd therefore received the benefit of the plea agreement.[1] *See* ***State v. Johnson***, 2012 WI App 21, ¶¶11-14, 339 Wis. 2d 421, 811 N.W.2d 411. The record shows the plea was knowingly, intelligently and voluntarily entered. *See* ***State v. Bangert***, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). Entry of a valid guilty or no contest plea constitutes a waiver of nonjurisdictional defects and defenses. ***Id.*** at 265-66.

There is also no basis to challenge the court's sentencing discretion. A defendant who affirmatively approves his sentence cannot attack it on appeal. *See* ***State v. Scherreiks***, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989).

Our independent review of the record reveals no other issues of arguable merit.

Therefore,

IT IS ORDERED that the judgment is summarily affirmed. WIS. STAT. RULE 809.21 (2013-14).

[1] We note, however, the appropriate potential maximum penalties were contained in the charging language contained in the amended Information.

IT IS FURTHER ORDERED that attorney Faun Moses is relieved of further representing Medd in this matter.

Diane M. Fremgen
Clerk of Court of Appeals