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DISTRICT III

October 6, 2015

To:

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

2014AP2399-CRNM State of Wisconsin v. Miguel E. Hulke (L. C. #2013CF502)

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

Counsel for Miguel Hulke has filed a no-merit report concluding no grounds exist to challenge Hulke's conviction for operating while intoxicated, as a fourth offense within five years, contrary to WIS. STAT. § 346.63(1)(a) (2013-14).[1] Hulke was informed of his right to file a response to the no-merit report 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. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

[1] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

The State charged Hulke with operating a motor vehicle while revoked and operating while intoxicated and with a prohibited alcohol concentration, the latter two counts as a fourth offense in five years. The circuit court denied Hulke's pretrial motion to suppress evidence. In exchange for his no contest plea to the OWI charge, the State agreed to dismiss and read in the remaining counts and join in defense counsel's recommendation to withhold sentence and impose three years' probation with seven months in jail as a condition of probation. The court imposed a sentence consistent with the joint recommendation.

Any challenge to the trial court's denial of Hulke's suppression motion would lack arguable merit. In his motion, Hulke argued that the arresting officer lacked reasonable suspicion to stop him. A traffic stop is generally reasonable if officers have reasonable suspicion that a violation has been or will be committed by the driver or if they have probable cause to believe a traffic violation has occurred. ***State v. Popke***, 2009 WI 37, ¶11, 317 Wis. 2d 118, 765 N.W.2d 569. Here, the officer testified that he stopped Hulke's vehicle just before 2:00 a.m. on May 29, 2013, after observing a non-functioning registration lamp on Hulke's vehicle.[2] The officer further testified that he first noticed Hulke's vehicle when he was within fifty feet of the rear of the car, and he had difficulty reading the license plate until he was close enough to illuminate it with his squad car's headlights. WISCONSIN STAT. § 347.13(3) provides, in relevant part:

> No person shall operate on a highway during hours of darkness any motor vehicle upon the rear of which a registration plate is required to be displayed unless such motor vehicle is equipped with a lamp so constructed and placed as to illuminate with a white

[2] The officer also noticed Hulke's gas cap hanging open but testified that, although he thought it was peculiar, the burned-out registration lamp was the primary cause of the stop.

> light the rear registration plate and render it clearly legible from a distance of 50 feet to the rear.

Because the record shows that Hulke's traffic violation provided a basis for the stop, there is no arguable merit to challenge the denial of Hulke's suppression motion.

The record discloses no arguable basis for withdrawing Hulke's no contest plea. The circuit court's plea colloquy, as supplemented by a plea questionnaire and waiver of rights form that Hulke completed, informed Hulke of the elements of the offense, the penalties that could be imposed, and the constitutional rights he waived by entering a no contest plea. The court confirmed Hulke's understanding that it was not bound by the terms of the plea agreement, *see* ***State v. Hampton***, 2004 WI 107, ¶2, 274 Wis. 2d 379, 683 N.W.2d 14, and also advised Hulke of the deportation consequences of his plea, as mandated by WIS. STAT. § 971.08(1)(c). Additionally, the court found that a sufficient factual basis existed in the criminal complaint to support the conclusion that Hulke committed the crime charged. The record shows the plea was knowingly, voluntarily, and intelligently made. *See* ***State v. Bangert***, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986).

There also is no arguable merit to a claim that the circuit court improperly exercised its sentencing discretion. Where a defendant affirmatively joins or approves a sentence recommendation, the defendant cannot attack the sentence on appeal. ***State v. Scherrieks***, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989). Here, the court sentenced Hulke consistent with the joint recommendation. In any event, it cannot reasonably be argued that Hulke's sentence is so excessive as to shock public sentiment. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Our independent review of the record discloses no other potential issue for appeal. Therefore,

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

IT IS FURTHER ORDERED that attorney Tristan Breedlove is relieved of further representing Hulke in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals