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DISTRICT III

October 6, 2015

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

2014AP2800-CRNM State of Wisconsin v. Christopher A. Zahn (L.C. # 2013CF129)

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

Counsel for Christopher Zahn has filed a no-merit report concluding there is no arguable basis for Zahn to withdraw his no contest pleas or challenge the sentences imposed for eighth offense operating a vehicle while intoxicated (OWI) and hit and run of an attended vehicle, or for challenging the concurrent sentences totaling five years' initial confinement and five years' extended supervision. Zahn was advised of his right to respond to the 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 basis for appeal.

The complaint charged Zahn with four offenses: (1) eighth offense OWI with an alcohol concentration enhancer; (2) hit and run of an attended vehicle; (3) obstructing an officer; and (4) disorderly conduct. The complaint alleged Zahn was involved in a head-on accident and left the scene in the involved vehicle. Zahn's girlfriend returned to the scene and attempted to confess her involvement in the accident. When the investigating officer did not believe her account, she admitted lying and stated Zahn was the driver. A citizen followed the vehicle and informed the police where the driver could be found. An officer went to the address and knocked on the door. Zahn answered the door, appearing intoxicated because he could not keep his balance and his eyes were glossy. He admitted to officers that he had been drinking. Zahn refused to perform any field sobriety tests. An officer then arrested Zahn. Apparently believing the officer took his wallet, Zahn lunged toward the officer and needed to be restrained.

The officer transported Zahn to a hospital for a blood draw. After Zahn was read the "Informing the Accused" form, Zahn refused to give consent to the blood draw claiming he was not driving the vehicle. The officers had to take Zahn by his arms and pull him out of a chair onto a hospital gurney and hold him down to perform the blood draw. During that time Zahn was "yelling and swearing very loudly" and could be heard throughout the emergency room.

Pursuant to a plea agreement, Zahn entered no contest pleas to counts one and two and the remaining counts were dismissed and read-in for sentencing purposes. The State agreed to cap its sentence recommendation at four years' initial confinement and four years' extended supervision. The court accepted the no contest pleas and sentenced Zahn to five years' initial confinement and five years' extended supervision on the OWI charge, and a concurrent ninety-day jail sentence on the hit-and-run charge. Those sentences were consecutive to any other sentence Zahn was serving at that time.

The no-merit report addresses whether the evidence resulting from the blood draw should have been suppressed based on *Missouri v. McNeely*, 133 S. Ct. 1552 (2013). Counsel correctly concludes any such challenge would fail based on the good faith exception recognized in *State v. Reese*, 2014 WI App 27, ¶22, 353 Wis. 2d 266, 844 N.W.2d 396. At the time Zahn's blood was drawn, the officers were following clear, well-settled precedent allowing them take a suspect's blood without a warrant.

The record also establishes no arguable manifest injustice upon which Zahn 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, supplemented by a Plea Questionnaire/Waiver of Rights form with its attached jury instructions informed Zahn of the constitutional rights he waived by pleading no contest and the elements of the offenses. The court also informed Zahn of the maximum penalties for the OWI offense. Although the court failed to mention the maximum penalties for the hit-and-run charge, the potential penalties were recited in the complaint and the plea questionnaire. In addition, because the court imposed a concurrent sentence for that offense, Zahn was not prejudiced by that omission. As required by *State v. Hampton*, 2004 WI 107, ¶2, 274 Wis. 2d 379, 683 N.W.2d 14, the court informed Zahn that it was not bound by the parties' sentence recommendations. The record shows the pleas were knowingly, voluntarily and intelligently entered. See *State v. Bangert*, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986).

Zahn's seven prior convictions were properly identified by date in the complaint and in the presentence investigation report. At the plea hearing, Zahn admitted to the seven prior convictions.

The record discloses no arguable basis for challenging the sentencing court's discretion. The court appropriately considered the seriousness of the offenses, Zahn's character and the need to protect the public. *See State v. Harris*, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). Zahn's blood alcohol content in this case was ten times the reduced legal limit applicable to Zahn. In addition to his seven prior OWI convictions, Zahn had fourteen other convictions and multiple revocations of supervision. The court considered no improper factors and the sentences totaling ten years' imprisonment are not arguably 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 judgments are summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Peter Heyne is relieved of his obligation to further represent Zahn in this matter. WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals