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DISTRICT II

October 21, 2015

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

2014AP2817-CRNM State of Wisconsin v. Dean A. Rauch (L.C. #2014CF42)

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

Dean Rauch appeals from a judgment convicting him of operating a vehicle while intoxicated (3rd offense) with a person under sixteen years old in the vehicle contrary to WIS. STAT. § 346.63(1)(a) (2013-14).¹ Rauch's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Rauch received a copy of the report but did not exercise his right to file a response. After considering the report and independently reviewing the record as mandated by *Anders* and RULE 809.32, we located issues

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

with arguable merit: an arguably defective plea colloquy, an unchallenged, warrantless blood draw without consent, and a potential ineffective assistance of trial counsel claim relating to the blood draw. Our June 30, 2015 order required appellate counsel to investigate these arguable issues and consult with Rauch. By affidavit, Rauch advises that after consulting with counsel, he has decided to waive these arguable issues. Therefore, we summarily affirm the judgment because there are no issues preserved for appeal that would have arguable merit. WIS. STAT. RULE 809.21.

The no-merit report addresses the following possible appellate issues: (1) whether the circuit court properly denied Rauch's motion to suppress evidence obtained as a result of a traffic stop; (2) whether Rauch's guilty plea was knowingly, voluntarily and intelligently entered and had a factual basis; and (3) whether the circuit court misused its sentencing discretion. Because Rauch has waived any defect in the plea colloquy, we do not address issue (2). We agree with appellate counsel that issues (1) and (3) do not have arguable merit for appeal.

A challenge to the circuit court's denial of Rauch's motion to suppress would lack arguable merit for appeal. Law enforcement was dispatched to locate Rauch's vehicle after a bank teller reported observing Rauch operating his vehicle while intoxicated and with a small child as a passenger. A police officer stopped Rauch's vehicle and observed an unrestrained child in the front seat along with signs that Rauch was intoxicated. Transporting an unrestrained child is a statutory violation. WIS. STAT. § 347.48(4)(am). We agree with the circuit court that the officer had reasonable suspicion to stop Rauch's vehicle based upon the teller's reliable report and the officer's observations, and the stop was "objectively reasonable under the circumstances." *State v. Rutzinski*, 2001 WI 22, ¶¶13-14, 18, 241 Wis. 2d 729, 623 N.W.2d

516. There would be no arguable merit to a challenge to the circuit court's denial of Rauch's motion to suppress.

The record reveals that the sentencing court's discretionary two-year sentence had a "rational and explainable basis." *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197. The court adequately discussed the facts and factors relevant to sentencing Rauch. In fashioning the sentence, the court considered the seriousness of the offense, Rauch's character, history of other offenses and previous failure on probation, and the need to protect the public. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The felony sentence complied with WIS. STAT. § 973.01 relating to the imposition of a bifurcated sentence of confinement and extended supervision. We agree with appellate counsel that there would be no arguable merit to a challenge to the sentence.

In addition to the issues discussed above, we have independently reviewed the record. Our independent review of the record did not disclose any potentially meritorious issue for appeal. Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report, affirm the judgment of conviction and relieve Attorney Martha Askins of further representation of Rauch in this matter.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Martha Askins is relieved of further representation of Dean Rauch in this matter.

Diane M. Fremgen
Clerk of Court of Appeals