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DISTRICT II

November 11, 2015

To:

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

2015AP1090-CRNM State of Wisconsin v. Adam S. Bartley (L.C. #2014CF452)

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

Adam Bartley appeals from a judgment of conviction for fourth offense operating while under the influence of an intoxicant (OWI). His appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2013-14),¹ and *Anders v. California*, 386 U.S. 738 (1967).

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

Bartley received a copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the report and an independent review of the record, we conclude that the judgment may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* RULE 809.21.

Bartley was stopped at approximately 1:30 a.m. after an officer observed him deviate in his lane of travel. After field sobriety tests, a warrant was obtained for a blood draw. Bartley was charged with both OWI and operating with a prohibited blood alcohol content (PAC). At the hearing on his motion to suppress evidence, Bartley represented himself. The suppression motion was denied. On the parties' agreement for a partial joint sentencing recommendation and the dismissal of the PAC charge as a read-in, Bartley entered a guilty plea. Sentence was withheld in favor of three years' probation with twelve months of conditional jail time. Other conditions of probation, including the requirement that Bartley submit a DNA sample and pay the surcharge, were part of the joint sentencing recommendation and imposed.

The no-merit report addresses the potential issues of whether the suppression motion was properly denied and the warrant properly obtained, whether Bartley's plea was freely, voluntarily and knowingly, entered and whether the sentence was the result of an erroneous exercise of discretion. This court is satisfied that the no-merit report properly analyzes the issues it raises as without merit, and this court will not discuss them further. We further observe that as to the conditions of probation, including the assessments for costs and surcharges, Bartley cannot challenge them because they were part of the joint sentencing recommendation. *See State v. Magnuson*, 220 Wis. 2d 468, 471-72, 583 N.W.2d 843 (Ct. App. 1998).

The no-merit report fails to flag the fact that during the plea colloquy the circuit court did not recite the deportation warning as required by WIS. STAT. § 971.08(1)(c). The failure to give the warning is not grounds for relief because there is no suggestion that Bartley could show that his plea is likely to result in deportation. *See State v. Douangmala*, 2002 WI 62, ¶4, 253 Wis. 2d 173, 646 N.W.2d 1. At the initial appearance, the court was informed that Bartley had lived in Washington County “his whole life.”

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the conviction and discharges appellate counsel of the obligation to represent Bartley further in this appeal.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of conviction is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Russell J.A. Jones is relieved from further representing Adam Bartley in this appeal. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals