



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT IV

January 7, 2016

To:

Hon. Dale T. Pasell
Circuit Court Judge
LaCrosse County Courthouse
333 Vine Street
La Crosse, WI 54601

Pamela Radtke
Clerk of Circuit Court
La Crosse County Courthouse
333 Vine Street, Room 1200
La Crosse, WI 54601

John C. Bachman
John Bachman Law Office
P.O. Box 477
Eau Claire, WI 54702-0477

Gregory M. Weber
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Amesia Ngialah Xiong
Asst. District Attorney
Room 1100
333 Vine St.
La Crosse, WI 54601

Kenneth D. Pederson
1526 Kane Street
La Crosse, WI 54603

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

2014AP2744-CRNM State of Wisconsin v. Kenneth D. Pederson (L.C. #2012CF370)

Before Lundsten, Sherman and Blanchard, JJ.

Attorney John Bachman, appointed counsel for Kenneth Pederson, 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). Counsel provided Pederson with a copy of the report, and Pederson responded to it. After our independent review of the record, we conclude that there is no arguable merit to any issue that could be raised on appeal.

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

In our order of November 19, 2015, we noted that counsel’s certification in the no-merit report ambiguously stated that counsel had “attempted” to discuss potential issues with Pederson. We ordered counsel to provide additional information about his contact with Pederson. Counsel has provided an affidavit describing his contacts with Pederson and stating that counsel terminated a telephone conversation about potential issues, in response to Pederson’s behavior. Pederson has not responded to dispute the affidavit. We proceed with the no-merit review.

After a jury trial, Pederson was convicted of one felony count of operating while intoxicated. The court withheld sentence and placed Pederson on probation, with jail time as a condition.

Pederson raises several issues in his response. The first is that the circuit court erred in denying his suppression motion. The motion challenged the basis for the stop of Pederson’s vehicle. The court concluded that the officer had reasonable suspicion based on the officer’s testimony that Pederson drove too closely behind the officer. The court also noted that some of the officer’s testimony about events after that point was not consistent with the squad car video.

Pederson appears to argue that, because of this inconsistency with the video, the court was required to reject *all* of the officer’s testimony as inaccurate, even though there was no video to refute the officer’s testimony about how closely Pederson was following the officer. Pederson does not suggest that any law required the court to reject all of the officer’s testimony and, indeed, the court was not required to reject all of the testimony. We conclude that it would be frivolous to argue that the court’s finding that Pederson followed too closely is clearly erroneous.

Pederson next argues that the judge “showed bias and erred” by “allowing” his judicial assistant to assist the prosecution with a witness who could not identify Pederson during the trial.

After the witness testified, the court stated that its judicial assistant, after this testimony, showed the witness a booking photograph of Pederson. This argument is frivolous for two reasons. First, the record does not show that the court “allowed” this to occur, but only that the court described an event. Second, no harm was caused by the judicial assistant’s acts because the witness had already testified and did not return to the stand.

Pederson also argues that error occurred because a law student who was not properly authorized to appear in court conducted the State’s examination of the phlebotomist. In the no-merit report, counsel concludes that any claim that might be based on this fact would be frivolous because of the absence of harm or prejudice to Pederson. In Pederson’s response, he does not explain what harm may have occurred and, after reading the examination, we cannot conceive of any. This issue lacks arguable merit.

The no-merit report addresses whether the sentence is within the legal maximum and whether the court erroneously exercised its sentencing discretion. The probation term is within the maximum. The standards for the circuit court and this court on sentencing issues are well established and need not be repeated here. *See State v. Gallion*, 2004 WI 42, ¶¶17-51, 270 Wis. 2d 535, 678 N.W.2d 197. In this case, the court considered appropriate factors, did not consider improper factors, and reached a reasonable result. There is no arguable merit to this issue.

Our review of the record discloses no other potential issues for appeal.

Therefore,

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

IT IS FURTHER ORDERED that Attorney John Bachman is relieved of further representation of Kenneth Pederson in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals