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DISTRICT II

September 7, 2016

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

2016AP171-CRNM State of Wisconsin v. Joshua P. Ronnfeldt (L.C. #2014CF533)

Before Reilly, P.J., Gundrum and Hagedorn, JJ.

Joshua P. Ronnfeldt appeals from a corrected judgment convicting him of homicide by intoxicated use of a vehicle and operating while revoked causing death. 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). Ronnfeldt was notified of his right to file a response but has not done so. Upon consideration of the report and an independent review of the record, we modify the

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

corrected judgment of conviction (JOC) and, as modified, summarily affirm it because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

After smoking a bowl of marijuana and consuming several beers and shots, Ronnfeldt drove approximately 67 mph in a 35 mph zone and crashed into the rear of a vehicle stopped for a train, killing the driver of the stopped vehicle. Ronnfeldt was apprehended shortly after fleeing the scene on foot. His blood alcohol level was 0.194.

An amended information charged Ronnfeldt with, Count 1, homicide by intoxicated use of a vehicle while having prior intoxicant-related convictions/revocations; Count 2, hit and run resulting in death; Count 3, operating a motor vehicle while revoked causing death of another; Count 4, misdemeanor bail jumping; and Count 5, homicide by intoxicated use of a vehicle with a prohibited alcohol concentration while having prior intoxicant-related convictions/revocations. All counts carried a repeater penalty enhancer. Counts 1 and 5 carried an alcohol fine enhancer.

Ronnfeldt entered no-contest pleas to Counts 1 and 3 with the repeaters dismissed, Counts 2 and 4 were dismissed and read in, and Count 5 was dismissed outright. The circuit court sentenced him to twenty years' initial confinement (IC) and seven years' extended supervision (ES) on Count 1 and three years' IC plus three years' ES on Count 3. It ordered that the sentences be served consecutive to each other and to any other sentence. This no-merit appeal followed.

The no-merit report addresses the potential issues of whether (1) there was an adequate factual basis to convict him; (2) he knowingly, voluntarily, and intelligently entered his plea; and (3) his sentence was too harsh. This court is satisfied that the no-merit report satisfactorily analyzes those issues raised as being without merit. We need not discuss them further.

Our independent review reveals this matter. The sentencing court orally sentenced Ronnfeldt as follows:

What I'm going to do for a sentence ... is on Count 1 I'm going to do a 27-year prison sentence: 20 years' [IC], seven years' [ES]. On Count 3 I'm going to do a six-year prison sentence: three years' [IC], three years' [ES]. Both of those counts are consecutive to each other and consecutive to any other sentence. I think that the 23-year prison sentence is appropriate based upon the actions of this case.

We conclude that the "23-year prison sentence" refers to the twenty years' IC on Count 1 plus the consecutive three years' IC on Count 3. But the original JOC stated that Ronnfeldt was sentenced on Count 1 to a total twenty-three-year sentence: twenty years' IC plus three years' ES. The Department of Corrections notified the court that, under WIS. STAT. § 973.01(2)(d), ES must be at least twenty-five percent of IC.

A corrected JOC increased Ronnfeldt's ES to five years. The corrected JOC is incorrect.

An oral pronouncement controls a written judgment. *State v. Perry*, 136 Wis. 2d 92, 114, 401 N.W.2d 748 (1987); *State v. Schordie*, 214 Wis. 2d 229, 231 n.1, 570 N.W.2d 881 (Ct. App. 1997). The court unambiguously orally ordered seven years' ES on Count 1. An error in a JOC is a mere defect in the form of the certificate of conviction that may be corrected in accordance with the sentencing court's actual determination. See *State v. Prihoda*, 2000 WI 123, ¶17, 239 Wis. 2d 244, 618 N.W.2d 857. The circuit court either may correct the clerical error in the sentence portion of the written JOC or direct the clerk's office to make the correction. *Id.*, ¶5.

Our independent review reveals no other meritorious issues.

Upon the foregoing reasons,

IT IS ORDERED that the corrected judgment of conviction is modified to conform to the oral sentencing pronouncement. The corrected judgment, as modified, is summarily affirmed and the cause is remanded for entry of a second corrected judgment of conviction. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Ralph Sczygelski is relieved from further representing Ronnfeldt in this appeal. *See* WIS. STAT. RULE 809.32(3).

*Diane M. Fremgen
Clerk of Court of Appeals*