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 III

September 13, 2016

To:

Hon. Jon M. Theisen
Circuit Court Judge
Eau Claire County Courthouse
721 Oxford Avenue
Eau Claire, WI 54703

Susan Schaffer
Clerk of Circuit Court
Eau Claire County Courthouse
721 Oxford Avenue, Ste. 2220
Eau Claire, WI 54703-5496

Gary King
District Attorney
721 Oxford Ave
Eau Claire, WI 54703

Dennis Schertz
Schertz Law Office
P.O. Box 133
Hudson, WI 54016

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

Travis M. Hazelton 276504
Waupun Corr. Inst.
P.O. Box 351
Waupun, WI 53963-0351

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

2014AP1628-CRNM State v. Travis M. Hazelton (L. C. No. 2012CF586)

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

Counsel for Travis Hazelton has filed a no-merit report concluding there is no basis to challenge Hazelton's convictions. Hazelton was advised of his right to respond 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 merit to any issue that could be raised on appeal and summarily affirm.

This case arises from an automobile accident that occurred when Hazelton was travelling at a high rate of speed and rear-ended another vehicle that was stopped at a red light, causing a

chain reaction involving at least six other vehicles. Prior to the accident, Hazelton and another individual were drinking, and Hazelton told police they were also "probably" smoking marijuana. The other individual in Hazelton's vehicle was killed in the collision. A woman and her daughter were very seriously injured in the rear-end collision, and another elderly woman was seriously injured in the pile-up.

Hazelton pled guilty to charges of homicide by intoxicated use a motor vehicle, as a repeater; great bodily harm by intoxicated use of a motor vehicle, as a repeater; reckless driving causing great bodily harm, as a repeater; and two counts of operating a motor vehicle while intoxicated causing injury, second or subsequent offense, as a repeater. Numerous other charges were dismissed and read in at sentencing.

The circuit court imposed consecutive sentences on two counts totaling nineteen years' initial confinement and seven years' extended supervision consecutively on two counts. The court withheld sentences on the three remaining counts and placed Hazelton on probation for a period of twenty-five years, to run concurrent with each other but consecutive to the prison terms.

There is no manifest injustice upon which Hazelton could withdraw his pleas. *See* ***State v. Duychak***, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). The circuit court's lengthy colloquy, together with the plea questionnaire and waiver of rights form with attachments, informed Hazelton of the elements of the offenses, the constitutional rights he waived by pleading guilty, and the potential penalties. Hazelton was specifically advised the court was not bound by the parties' agreement and could impose the maximum penalties. Although not raised in the no-merit report, the court's failure to provide the potential deportation consequences

outlined in WIS. STAT. § 971.08(1)(c) (2013-14), did not prejudice Hazelton because the record shows he was born in Wisconsin. Hazelton conceded a proper factual basis supported the convictions. The record shows the pleas were knowingly, intelligently and voluntarily entered. *See* ***State v. Bangert***, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). Entry of a valid guilty plea constitutes a waiver of nonjurisdictional defects and defenses. ***Id.*** at 265-66.

The record also discloses no basis to challenge the court's sentencing discretion. The circuit court considered the proper sentencing factors, including Hazelton's character, the seriousness of the offenses and the need to protect the public. *See* ***State v. Harris***, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). The court emphasized this was a "fourth offense OWI resulting in both injury and death." The court stated "there is no more grave offense than homicide." The court noted Hazelton's "deep-rooted substance abuse problem, disdain for authority and blatant disrespect for society." The court stated Hazelton "became involved in chemicals and crime at very young age" and "that pretty much continued until you were 36 years old, the day of this accident." The court recounted Hazelton's disturbing criminal history and also stressed Hazelton's "severe and varied chemical usage since probably the time you were about 13," including but not limited to marijuana, methadone, heroin, cocaine and alcohol. The court concluded the present incident was done "recklessly, callously [and] cavalierly." The court also stated, "with regard to remorse, repentance, cooperativeness of the defendant, I would have given you a complete and utter failing grade." Hazelton's rehabilitative needs were found to be "uncontroverted and profound." The court's sentence was allowable by law and not overly harsh or excessive. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

We note the presentence investigation report mentioned the COMPAS risk assessment. However, the record discloses it was not "determinative" of the sentence imposed by the circuit

court. *See* ***State v. Loomis***, 2016 WI 68, ¶¶98-99, ___ Wis. 2d ___, 881 N.W.2d 749. Any challenge to the sentence based on the court's reference to COMPAS would lack arguable merit.

Our independent review of the record discloses no other issues of arguable merit. Therefore,

IT IS ORDERED that the judgment is summarily affirmed. WIS. STAT. RULE 809.21 (2013-14).

IT IS FURTHER ORDERED that attorney Dennis Schertz is relieved of further representing Hazelton in this matter.

Diane M. Fremgen
Clerk of Court of Appeals