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**DISTRICT II**

March 1, 2017

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Jamie S. Hofmeister  
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You are hereby notified that the Court has entered the following opinion and order:

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2016AP2212-CRNM      State of Wisconsin v. Jamie S. Hofmeister (L.C. # 2015CF828)

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

Jamie S. Hofmeister appeals from a judgment of conviction for operating a motor vehicle while under the influence (OWI) as a fourth offense in five years and from an order denying her motion for postconviction relief. Her appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2015-16),<sup>1</sup> and *Anders v. California*, 386 U.S. 738 (1967). Hofmeister received a copy of the report, was advised of her right to file a response, and has

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

elected not to do so. Upon consideration of the report and an independent review of the record, we conclude that the judgment and order may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* RULE 809.21.

At 2:36 a.m. on July 1, 2015, an officer observed Hofmeister drive her vehicle the wrong way in a roundabout, drive northbound in southbound lanes, and then drive over the grassy median to get into the northbound lanes. After stopping Hofmeister's vehicle, the officer smelled intoxicants and observed that Hofmeister's eyes were glassy and bloodshot and her speech was slow, slurred, and deliberate. A license check reflected that Hofmeister had a revoked driver's license and an ignition interlock device requirement. Hofmeister did not have an ignition interlock device on the vehicle she was driving, which was registered to her. Hofmeister failed field sobriety tests and refused a preliminary breath test. After arrest, Hofmeister refused to submit to a blood test. A telephonic search warrant was obtained and a blood sample taken. Hofmeister was charged with OWI, operating with a prohibited alcohol concentration (PAC) as a fourth offense in five years, operating after revocation, and failure to install an ignition interlock device.

Hofmeister entered a guilty plea to the OWI charge. At the plea hearing, Hofmeister agreed that the dates of her prior OWI convictions as alleged in the complaint were correct. The PAC charge was dismissed. The operating after revocation and failure to install the ignition interlock device charges were dismissed as read-ins at sentencing. The prosecution agreed to recommend a sentence of eighteen months initial confinement and two years' extended supervision. Hofmeister was sentenced to eighteen months initial confinement and two and one-half years' extended supervision with 187 days of sentence credit. The minimum mandatory fine of \$600, doubled because of Hofmeister's .185 blood alcohol level, was also imposed.

Postconviction Hofmeister moved to withdraw her guilty plea on the ground that trial counsel was ineffective for failing to file a motion to suppress the evidence obtained from an allegedly invalid search warrant.<sup>2</sup> A *Machner*<sup>3</sup> hearing was held. Trial counsel acknowledged that she was aware that the court commissioner who authorized the warrant did not receive the email the officer sent containing the warrant or supporting affidavit. Trial counsel conceded that she did not do any research regarding the application process for obtaining a telephonic search warrant. Despite being aware that the officer did not read the search warrant verbatim to the court commissioner, trial counsel did not move to suppress because she did not think the blood alcohol concentration was an issue in this case, because there was sufficient evidence to convict Hofmeister of the OWI charge.

The circuit court denied the postconviction motion. The court found that the procedure set forth in WIS. STAT. § 968.12(3) (2013-14), to obtain the warrant was not strictly followed because the officer did not read the warrant verbatim.<sup>4</sup> The court explained that if a motion challenging the warrant on that ground had been filed, the motion would have been denied because under the circumstances the warrant was properly issued and probable cause was

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<sup>2</sup> Prior to the appointment of postconviction counsel, Hofmeister filed several pro se postconviction motions alleging discovery violations, an illegal search, breach of the plea agreement, and ineffective trial counsel. The motions were treated as withdrawn after Hofmeister agreed to proceed with appointed postconviction counsel. No issue of arguable merit arises from the pro se motions.

<sup>3</sup> A *Machner* hearing addresses a defendant's ineffective assistance of counsel claim. See *State v. Machner*, 92 Wis. 2d 797, 285 N.W.2d 905 (Ct. App. 1979).

<sup>4</sup> WISCONSIN STAT. § 968.12(3) (2013-14) sets forth the procedure for obtaining a warrant by oral testimony communicated by telephone. Section 968.12(3)(b) provides: "The person who is requesting the warrant shall prepare a duplicate original warrant and read the duplicate original warrant, verbatim, to the judge. The judge shall enter, verbatim, what is read on the original warrant. The judge may direct that the warrant be modified."

established by the facts relayed by the officer. The court observed that the forms in use at the time the warrant was applied for telephonically listed a number of different types of behaviors, some of which would apply and some that would not. The court concluded that it was not necessary for the officer to read those portions of the form that did not apply. The court also found that there was no question that the warrant was for a blood test. Thus, the court concluded that Hofmeister was not prejudiced by trial counsel's failure to file a suppression motion and trial counsel was not ineffective.

The no-merit report addresses the potential issues of whether the prosecution failed to disclose requested discovery materials, whether Hofmeister's plea was freely, voluntarily and knowingly entered, whether the prosecutor breached the plea agreement at sentencing, whether the sentence was the result of an erroneous exercise of discretion, and whether trial counsel was ineffective for not filing a motion to suppress the blood test. 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.<sup>5</sup>

Our review of the record discloses no other potential issues for appeal.<sup>6</sup> Accordingly, this court accepts the no-merit report, affirms the conviction and order denying the postconviction

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<sup>5</sup> During the plea colloquy the deportation warning required by WIS. STAT. § 971.08(1)(c), was not given. The presentence investigation report indicates that Hofmeister was raised in Milwaukee, Wisconsin. The failure to give the warning is not a ground for relief because there is no suggestion that Hofmeister could show that her plea is likely to result in deportation. See *State v. Douangmala*, 2002 WI 62, ¶4, 253 Wis. 2d 173, 646 N.W.2d 1.

<sup>6</sup> Any other possible appellate issues from the proceedings before entry of the plea are waived because Hofmeister's guilty plea waived the right to raise nonjurisdictional defects and defenses, including claimed violations of constitutional rights. *State v. Lasky*, 2002 WI App 126, ¶11, 254 Wis. 2d 789, 646 N.W.2d 53.

motion, and discharges appellate counsel of the obligation to represent Hofmeister further in this appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Becky Van Dam is relieved from further representing Jamie S. Hofmeister in this appeal. *See* WIS. STAT. RULE 809.32(3).

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*