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DISTRICT II

June 28, 2017

To:

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

2017AP83-CRNM State of Wisconsin v. Corey P. Crabb (L.C. #2016CF332)

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

Corey P. Crabb appeals from a judgment convicting him of operating while intoxicated causing injury (OWI), second or subsequent offense; reckless driving causing injury; and operating with a prohibited alcohol concentration causing injury (PAC), second or subsequent offense. His appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2015-16)[1] and ***Anders v. California***, 386 U.S. 738 (1967). Crabb was advised of his right to file

[1] All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

a response but has not done so. After reviewing the no-merit report and the record, we conclude there are no issues with arguable merit for appeal. We summarily affirm the judgment. *See* WIS. STAT. RULE 809.21.

Crabb took a curve at a high rate of speed, lost control of his vehicle, crossed the center line, and collided head-on with an oncoming car. Both drivers sustained serious injuries requiring Flight-for-Life transport, surgery, and significant postsurgical treatment and recovery time. Crabb's blood alcohol concentration (BAC) was 0.15. Due to his prior OWIs, he was prohibited at the time of the crash from operating a vehicle with a BAC above 0.02.

Crabb pled guilty to the OWI and reckless driving charges; the PAC charge was dismissed outright. He was sentenced to six years' imprisonment for the OWI, consisting of three years' initial confinement and three years' extended supervision. For the reckless driving count, the court imposed one year concurrent jail time. This no-merit appeal followed.

The no-merit report first addresses whether there would be arguable merit to a challenge to the validity of Crabb's plea. To withdraw a plea postsentencing, a defendant must establish that plea withdrawal is necessary to correct a manifest injustice, such as that the plea was not knowing, intelligent, and voluntary. ***State v. Brown***, 2006 WI 100, ¶18, 293 Wis. 2d 594, 716 N.W.2d 906.

Crabb would not be able do so. The circuit court conducted a plea colloquy satisfying its mandatory duties to personally address him and determine such information as his understanding of the nature of the charge, the range of potential penalties, the constitutional rights waived by pleading, and the plea's direct consequences, and to ascertain whether a factual basis existed to

support the plea. *See* ***State v. Hoppe***, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794. We agree with counsel that a motion for plea withdrawal would be without merit.

The no-merit report also addresses whether a nonfrivolous challenge to the sentence imposed could be raised. Sentencing lies within the sound discretion of the circuit court, and a strong policy exists against appellate interference with that discretion. *See* ***State v. Haskins***, 139 Wis. 2d 257, 268, 407 N.W.2d 309 (Ct. App. 1987). Our independent review of the sentencing record confirms that the court considered the primary factors—the gravity of the offense, the character of the offender, and the need to protect the public. ***State v. Harris***, 119 Wis. 2d 612, 623, 350 N.W.2d 633, 639 (1984).

The court considered various mitigating factors, but emphasized that Crabb never seriously addressed his alcoholism; that it was his choice to once again drink and drive, this time visiting life-altering injuries on another; and that the need to shield others from similar, or worse, injury cannot be ignored. It was within the court's discretion to give greatest weight to the gravity of the offense and the need to protect the public. *See* ***Cunningham v. State***, 76 Wis. 2d 277, 282, 251 N.W.2d 65, 67-68 (1977).

Crabb was sentenced to the maximum on both counts. Given his prior OWIs, a BAC far exceeding his legal limit, the victim's serious injuries, and that the sentences were imposed concurrently, it cannot be said that Crabb's punishment "is so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances." ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Finally, counsel indicates that she is not aware of any information qualifying as a "new factor" that could serve as grounds for seeking sentence modification. *See* ***State v. Crochiere***, 2004 WI 78, ¶14, 273 Wis. 2d 57, 681 N.W.2d 524, *abrogated on other grounds by* ***State v. Harbor***, 2011 WI 28, 333 Wis. 2d 53, 797 N.W.2d 828. We agree, and our independent review reveals no other meritorious issues.

For the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Megan Sanders-Drazen is relieved of any further representation of Crabb on this appeal.

IT IS FURTHER ORDERED that this summary disposition order will not be published and may not be cited except as provided under WIS. STAT. RULE 809.23(3).

Diane M. Fremgen
Clerk of Court of Appeals