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**DISTRICT II**

February 7, 2018

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

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2017AP1563-CRNM      State of Wisconsin v. Ronald J. Gyzen (L.C. #2016CF841)

Before Neubauer, C.J., Gundrum and Hagedorn, JJ.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Ronald J. Gyzen appeals from judgments convicting him of OWI (7th, 8th, or 9th offense) and obstructing an officer. 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). Gyzen was

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

advised of his right to file a response but has not done so. Upon consideration of the no-merit report and an independent review of the record as mandated by *Anders* and RULE 809.32, we conclude there are no issues with arguable merit for appeal and thus summarily affirm the judgments. *See* WIS. STAT. RULE 809.21.

A police officer observed a man who looked intoxicated near a vehicle in a parking lot. When the officer saw the vehicle exit the parking lot, travel in the middle of two lanes about twenty miles below the speed limit, and strike the curb twice, he performed a traffic stop. The driver—Gyzen—had glassy eyes, slurred speech, the odor of intoxicants on his breath, and difficulty unlocking his door while trying to exit the vehicle. Once out, he had to lean against the vehicle to keep from falling over, failed the field sobriety tests, and refused to take a preliminary breath test or consent to a blood draw.<sup>2</sup> He was arrested and placed in a second officer’s squad car, where he shouted vulgarities at that officer and said he was going to kill him, and told the first officer he “better lock up his family.”

Gyzen was charged with one count each of OWI (7th, 8th or 9th offense), threat to law enforcement officer, and disorderly conduct. An amended information, filed pursuant to a negotiated plea agreement, alleged OWI (7th, 8th, or 9th) and disorderly conduct; the threat-to-officer count was amended to obstructing an officer. Gyzen entered guilty pleas to the OWI and obstruction counts. The disorderly conduct was dismissed per the plea agreement. The court

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<sup>2</sup> Blood drawn later pursuant to a warrant revealed a blood alcohol concentration of .201.

sentenced him on the OWI count<sup>3</sup> to the maximum term of ten years' imprisonment, bifurcated as five years' confinement and five years' extended supervision, and 185 days in jail on the obstructing-an-officer count. This no-merit appeal followed.

The no-merit report first considers whether Gyzen's guilty plea was knowing, voluntary, and intelligent. During the course of a plea hearing, a circuit court must address the defendant personally and fulfill several duties under WIS. STAT. § 971.08 and judicial mandates to ensure that the guilty plea is constitutionally sound. *State v. Brown*, 2006 WI 100, ¶¶34-36, 293 Wis. 2d 594, 716 N.W.2d 906.

The circuit court conducted a thorough colloquy that incorporated Gyzen's signed plea questionnaire. The court discussed both counts' elements, which were attached to the plea questionnaire, and confirmed that Gyzen understood them. It informed Gyzen, and confirmed that he understood, that it was not bound by the recommendation of either party and could impose the maximum penalty. *See State v. Hampton*, 2004 WI 107, ¶20, 274 Wis. 2d 379, 683 N.W.2d 14. The court recited the constitutional rights Gyzen was waiving, verified that he had no further questions, and found a factual basis from the criminal complaint. Our review of the record satisfies us that Gyzen's guilty pleas were entered knowingly, voluntarily, and intelligently.

The report also considers whether any nonfrivolous challenge could be made to the sentence. While the OWI prison sentence was the maximum available, we agree that it is legal,

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<sup>3</sup> When Gyzen was charged in July 2016, OWI (7th, 8th, or 9th) was a G felony. *See* WIS. STAT. § 346.65(2)(am)6. (2013-14). Effective January 1, 2017, OWI (7th, 8th, or 9th) was made an F felony. *See* WIS. STAT. § 346.65(2)(am)6.; *see also* 2015 Wis. Act 371, §§ 8, 19.

was imposed on the basis of accurate information, and could not be challenged as unduly harsh or as an erroneous exercise of discretion.

The record shows that the court considered the seriousness of the offense, Gyzen's character, and the need to protect the public, *see State v. Klubertanz*, 2006 WI App 71, ¶18, 291 Wis. 2d 751, 713 N.W.2d 116, and amply explained the reasons for the sentence, *see State v. Gallion*, 2004 WI 42, ¶¶38-39, 270 Wis. 2d 535, 678 N.W.2d 197. The court discussed Gyzen's upbringing, familial relationships, education, and work history. It deemed the offense serious "because of the potential of bodily harm or death to other individuals in the community." The court found that he posed a significant risk to the public and, given his many failures on supervision, the only way to prevent him from continuing to drive drunk was incarceration. Although Gyzen's prison sentence for the OWI was the maximum available, the court thoroughly explained its rationale for imposing it. *See id.*, ¶49. It cannot be said that it is so out of proportion to the offense that it would "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).

Our review of the record discloses no other potential issues for appeal. Gyzen's guilty pleas waived the right to raise nonjurisdictional defects and defenses arising from proceedings before entry of the pleas, including claimed violations of constitutional rights. *State v. Kraemer*, 156 Wis. 2d 761, 765, 457 N.W.2d 562 (Ct. App. 1990). Accordingly, this court accepts the no-merit report, affirms the convictions, and discharges appellate counsel of the obligation to represent Gyzen further in this appeal.

Upon the foregoing reasons,

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

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

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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