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DISTRICT IV

April 3, 2018

To:

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

2017AP831-CRNM State of Wisconsin v. Paul S. Schroeder (L.C. # 2015CF1426)

Before Lundsten, P.J., Sherman and Blanchard, 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).

Attorney Steven Zaleski, appointed counsel for Paul Schroeder, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2015-16)¹ and *Anders v. California*, 386 U.S. 738 (1967). Counsel provided Schroeder with a copy of the report, and he responded to it. After our

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

independent review of the record, we conclude that there is no arguable merit to any issue that could be raised on appeal.

After a jury trial, Schroeder was convicted of one count of operating while intoxicated, sixth offense. The court imposed a sentence of eighteen months of initial confinement and three years of extended supervision.

The no-merit report addresses Schroeder's competency to proceed at sentencing. In response to a request from his trial counsel, the circuit court ordered a competency review, which concluded that Schroeder was competent. Schroeder did not contest that conclusion at the competency hearing. There is no arguable merit to this issue.

The no-merit report addresses the sufficiency of the evidence. We affirm the verdict unless the evidence, viewed most favorably to the State and the conviction, is so insufficient in probative value and force that no reasonable trier of fact could have found guilt beyond a reasonable doubt. *State v. Poellinger*, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). Credibility of witnesses is for the trier of fact. *Id.* at 504.

There is no arguable merit to a challenge to the sufficiency of the evidence in this case. The testimony of the witnesses and the blood test were sufficient to establish that, when arrested, Schroeder was intoxicated. The disputed issue at trial was whether the State could prove when Schroeder drove his vehicle to the parked location where he was arrested, and whether he was intoxicated when he drove there. The jury could reasonably infer that Schroeder drove there shortly before his arrest, and thus while intoxicated, from the officer's testimony that Schroeder said he had driven there from home. We recognize that other possible sequences of events are

not ruled out by that testimony but, as provided under our standard of review, we do not weigh conflicting reasonable inferences when reviewing sufficiency of the evidence.

The no-merit report discusses whether the circuit court erred by including Schroeder's numerical blood test result in its description to the jury of what the information alleged. The report does not identify any legal theory under which that might have been error. And, even if the jury should not have been told the number before hearing the evidence, it is not apparent what prejudice Schroeder suffered. There is no arguable merit to this issue.

The no-merit report addresses whether the circuit court erroneously exercised its sentencing discretion. The standards for the circuit court and this court on sentencing issues are well established and need not be repeated here. *See State v. Gallion*, 2004 WI 42, ¶¶17-51, 270 Wis. 2d 535, 678 N.W.2d 197. In this case, the court considered appropriate factors, did not consider improper factors, and reached a reasonable result. There is no arguable merit to this issue.

In Schroeder's response to the no-merit report, he discusses bank record evidence that shows he made purchases at a liquor store on the day of his arrest. Schroeder appears to believe this evidence would have been useful at his trial, but it is not clear how. The fact that Schroeder possessed alcohol does not seem to be in dispute, and the bank records do not appear to shed any light on the key issues, namely, when Schroeder drove to the parking lot or what his condition was at that time.

Our review of the record discloses no other potential issues for appeal.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Steven Zaleski is relieved of further representation of Paul Schroeder in this matter. *See* WIS. STAT. RULE 809.32(3).

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

Sheila T. Reiff
Clerk of Court of Appeals