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DISTRICT III

April 17, 2018

To:

Hon. James A. Morrison
Circuit Court Judge
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Steven M. Urbaniak
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You are hereby notified that the Court has entered the following opinion and order:

2017AP2343-CRNM State of Wisconsin v. Steven M. Urbaniak (L. C. No. 2015CF182)

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

Steven M. Urbaniak appeals from a judgment of conviction for operating a motor vehicle while under the influence of an intoxicant (OWI), as a fifth or sixth offense. His appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2015-16),¹ and *Anders*

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

v. California, 386 U.S. 738 (1967). Urbaniak received a copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the report and an independent review of the record, we conclude that the judgment may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

Urbaniak was stopped after an officer observed his vehicle swerving between the edge of the roadway and the centerline. Urbaniak refused to perform field sobriety tests. A preliminary breath test revealed a .213 blood alcohol concentration. Urbaniak's blood was drawn at a medical facility after police obtained a search warrant. Urbaniak was charged with OWI and operating with a prohibited blood alcohol concentration. He entered a no-contest plea to the OWI charge and the other charge was dismissed, as were related civil citations for speeding, failure to stop at a stop sign, and failure to control a vehicle. The plea agreement recited on the record left the prosecution free to argue for an appropriate sentence.² Urbaniak was sentenced to eighteen months' initial confinement and three years' extended supervision.

The no-merit report addresses the potential issues of whether Urbaniak's plea was freely, voluntarily, and knowingly entered and whether the sentence was the result of an erroneous exercise of discretion or was unduly harsh. 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.

² The plea questionnaire stated that the prosecution would recommend eighteen months' confinement and eighteen months' extended supervision. Urbaniak's counsel confirmed that the recitation of the plea agreement at the plea hearing was acceptable.

Our review of the record discloses no other potential issues for appeal.³ Accordingly, this court accepts the no-merit report, affirms the conviction, and discharges appellate counsel of the obligation to represent Urbaniak further in this appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that attorney Ralph J. Sczygelski is relieved from further representing Steven M. Urbaniak in this appeal. *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

³ Before entry of his plea, Urbaniak filed a motion collaterally attacking a 1995 OWI conviction in Michigan on the basis that he did not validly waive his right to counsel. After the prosecution produced the 1995 judgment reflecting that Urbaniak had been advised of his right to appointed counsel and knowingly, intelligently, and voluntarily waived that right, Urbaniak abandoned the motion. *See State v. Woods*, 144 Wis. 2d 710, 716, 424 N.W.2d 730 (Ct. App. 1988). No issue arises from the abandoned motion.