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**DISTRICT III**

April 17, 2018

To:

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Circuit Court Judge  
Outagamie County Courthouse  
320 S. Walnut St.  
Appleton, WI 54911

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Clerk of Circuit Court  
Outagamie County Courthouse  
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You are hereby notified that the Court has entered the following opinion and order:

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2017AP272-CRNM      State of Wisconsin v. Brian Travis Flatoff (L. C. No. 2015CF661)

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).**

Counsel for Brian Flatoff has filed a no-merit report, concluding there is no basis to challenge Flatoff's conviction for operating while intoxicated (OWI), fifth or sixth offense. Flatoff was advised of his right to respond and has failed to respond. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude there is no arguable merit to any issue that could be raised on appeal and summarily affirm.

According to the criminal complaint, it was reported that a possibly intoxicated driver was traveling from Neenah to Appleton. Police were also aware of an investigation of a trespass complaint reporting Flatoff was operating a white Harley Davidson motorcycle.<sup>1</sup> Shortly after the police officer arrived at the location of Flatoff's tattoo parlor in Appleton, Flatoff drove up to the address operating a white Harley Davidson motorcycle. The officer approached Flatoff and informed him of the trespass complaint. Flatoff acknowledged taking the motorcycle but claimed it belonged to him. As Flatoff spoke, the officer noticed his speech was slurred. The officer detected a strong odor of intoxicants and observed Flatoff's eyes were bloodshot and glassy. Flatoff admitted consuming four beers and two shots of alcohol, and also stated that he had taken Hydrocodone and Trazadone for issues related to his left arm. Field sobriety tests were performed, and a preliminary breath test registered a .13 blood alcohol content. Flatoff subsequently pleaded no contest to the OWI count, and a related charge of operating with a prohibited blood alcohol content was dismissed. The circuit court imposed a sentence consisting of twenty months' initial confinement and thirty-five months' extended supervision.

The no-merit report addresses whether any issues arise from the proceedings leading up to the entry of Flatoff's plea; whether Flatoff's plea was knowingly, intelligently, and voluntarily entered; whether the circuit court properly exercised its sentencing discretion; and whether Flatoff's trial counsel provided effective assistance. With the exceptions noted below, this court is satisfied that the no-merit report properly analyzes the issues it raises as being without merit.

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<sup>1</sup> Flatoff apparently kicked in a garage door where the motorcycle had been stored.

The no-merit report does not consider the circuit court’s failure to personally advise Flatoff of the deportation consequences of his plea, as mandated by WIS. STAT. § 971.08(1)(c) (2015-16).<sup>2</sup> A potential issue could thus arise whether Flatoff could show that his plea was likely to result in his “deportation, the exclusion from admission to this country or the denial of naturalization.” *See id.* However, our independent review of the record shows that Flatoff was born in Milwaukee and is thus a citizen of the United States. The circuit court’s error is therefore harmless.

Our independent review of the record reveals that Flatoff initially pleaded not guilty to the charges by reason of mental disease or defect. The no-merit report fails to discuss potential issues regarding whether Flatoff lacked substantial capacity to appreciate wrongfulness or to conform his conduct to the requirements of the law at the time of the alleged offenses. However, following the results of a mental health report ordered by the circuit court, Flatoff withdrew his plea of not guilty by reason of mental disease or defect. Our independent review of the record reveals no issues of arguable merit regarding Flatoff’s competency.

Our further independent review of the record reveals no other issues of arguable merit.

Therefore,

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

IT IS FURTHER ORDERED that attorney Mark A. Schoenfeldt is relieved of further representing Flatoff in this matter. WIS. STAT. RULE 809.32(3).

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<sup>2</sup> All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

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

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*