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**DISTRICT III**

May 30, 2018

To:

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

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2018AP282-CRNM      State of Wisconsin v. Gary E. Schuelke (L. C. No. 2016CF181)

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).**

Gary Schuelke appeals from a judgment of conviction for eighth-offense operating a motor vehicle while under the influence of an intoxicant, for which he received a sentence of five years' initial confinement and five years' extended supervision. His 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). Schuelke has filed a response to the no-merit report that suggests he feels his sentence is too long. 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.

Schuelke was stopped for speeding and eventually arrested for operating while intoxicated. He was charged with both operating under the influence and operating with a prohibited blood alcohol concentration. He entered a no-contest plea to the operating while intoxicated charge. At sentencing, the prosecution made no argument as to whether its recommended ten-year maximum sentence be served consecutively or concurrently with another sentence Schuelke was then serving. In addition to imposing the maximum sentence, the court imposed a \$2200 fine. Schuelke's sentence was made concurrent to another sentence he was serving, and he was found to be eligible for the substance abuse program after serving four years of his present sentence. Sentence credit was determined to be 258 days.

The no-merit report addresses the potential issues of whether Schuelke's plea was freely, voluntarily, and knowingly entered, and whether there is any meritorious challenge to the sentence, including whether the sentence was the result of an erroneous exercise of discretion, is unduly harsh or excessive, was based on inaccurate information, or is otherwise subject to modification based on a new factor. The report also concludes Schuelke was given the correct

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

amount of sentence credit. This court is satisfied that the no-merit report properly analyzes the issues it raises as without merit,<sup>2</sup> and this court will not discuss them further.

In his response, Schuelke suggests that positive strides he made in recovery and being more than six years sober were factors ignored at sentencing, resulting in a sentence that was too long. The sentencing court acknowledged that Schuelke had held a job for a substantial period of time and that Schuelke had personal issues that contributed to his relapse. The court balanced those factors against the need to protect the public from a person who chose to drive while intoxicated despite previous prison sentences. The court exercised its discretion in fashioning a sentence based on Schuelke's circumstances. Schuelke's suggestions that courts only give lip service to the need to reduce prison populations and treat addiction are not meritorious grounds for appeal.

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

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<sup>2</sup> During the plea colloquy, the deportation warning required by WIS. STAT. § 971.08(1)(c), was not given. The presentence investigation report lists Schuelke's birthplace as Wisconsin. The failure to give the warning is not a ground for relief because there is no suggestion that Schuelke could show that his plea is likely to result in deportation. *See State v. Douangmala*, 2002 WI 62, ¶4, 253 Wis. 2d 173, 646 N.W.2d 1, *overruled on other grounds by State v. Reyes Fuerte*, 2017 WI 104, ¶36, 378 Wis. 2d 504, 904 N.W.2d 773.

IT IS FURTHER ORDERED that attorney Alisha McKay is relieved from further representing Schuelke 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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*Sheila T. Reiff*  
*Clerk of Court of Appeals*