



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT III

August 21, 2018

To:

Hon. Mark J. McGinnis
Circuit Court Judge
Outagamie County Justice Center
320 S. Walnut St.
Appleton, WI 54911

Barb Bocik
Clerk of Circuit Court
Outagamie County Courthouse
320 S. Walnut St.
Appleton, WI 54911

Daniel Goggin II
Goggin & Goggin
P.O. Box 646
Neenah, WI 54957-0646

Melinda J. Tempelis
District Attorney
320 S. Walnut St.
Appleton, WI 54911-5918

Criminal Appeals Unit
Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

Napoleon J. Pickett 509081
Kettle Moraine Corr. Inst.
P.O. Box 282
Plymouth, WI 53073-0282

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

2017AP766-CRNM State of Wisconsin v. Napoleon J. Pickett (L. C. No. 2014CT502)

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 Napoleon Pickett has filed a no-merit report concluding there is no basis to challenge Pickett's convictions for third-offense operating a motor vehicle while intoxicated (OWI) and operating after revocation (OAR). Pickett was advised of his right to respond and has not responded. Upon our independent review of the record as mandated by *Anders v.*

California, 386 U.S. 738 (1967), we conclude there is no merit to any issue that could be raised on appeal and summarily affirm. *See* WIS. STAT. RULE 809.21 (2015-16).¹

Pickett was charged with OWI and operating with a prohibited blood alcohol concentration (BAC), both as third offenses, and with OAR. Pickett proceeded to a jury trial where the only contested issue was whether Pickett was driving the vehicle. The investigating officer testified that he had completed a traffic stop in Little Chute when he was approached by a woman in a nearby parking lot asking for assistance in retrieving a dog that was allegedly taken. The woman told the officer that she had been in a relationship with Pickett, and he was in possession of her dog. The woman indicated Pickett would be “coming to the area” and she requested the officer “stand by” because of potential problems. A vehicle soon entered the parking lot and the woman started yelling, “that’s the vehicle, that’s the vehicle” The woman went to the driver’s side door and yelled “he’s drunk.” The individual got out of the driver’s side of the vehicle and identified himself verbally and with a social security card as Pickett. The officer testified there was no other person in the vehicle.

The officer testified that he noticed Pickett had watery eyes and slurred his words. The officer checked the status of Pickett’s driver’s license and discovered it was revoked. Pickett admitted drinking alcohol “earlier in the day.” After field sobriety tests were administered, the officer concluded Pickett was under the influence, and he was placed under arrest. Pickett stipulated at trial that his BAC was .137%, and, further, that the sampling and testing of his

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

blood was done appropriately. Pickett further stipulated the only relevant element remaining at trial regarding the OWI and BAC counts was whether he was operating the motor vehicle.

Pickett testified that he did not drive the motor vehicle to the scene. Pickett insisted he was a passenger in the vehicle, which arrived prior to the officer's appearance, and that an individual named Antonio had driven the vehicle. Prior to Pickett's encounter with the officer, Antonio had exited the vehicle and walked to his girlfriend's house nearby. Pickett testified he also exited the vehicle and was smoking a cigarette on the sidewalk, with the dog inside the vehicle. Pickett claimed he was about to enter a nearby restaurant when the woman noticed him and "said something" that drew the officer's attention to Pickett.

On cross-examination, Pickett admitted he knew his license had been revoked. The owner of the car also testified as a defense witness. She stated she worked at the restaurant and Antonio had been using her car that day. She claimed Antonio had taken her to work and was going to pick her up at the end of her shift. She further testified that Antonio had left the keys in the vehicle when he walked down to his girlfriend's house. She testified that she found the keys in the vehicle when she came out of work and observed Pickett "talking sobriety" with the officer.

Pickett testified on cross-examination that at no point that evening did he sit in the driver's side of the vehicle, but that he took the keys with him when he got out of the car, and the keys were in his "hoodie pocket." The officer testified he believed the owner of the vehicle was Pickett's "new girlfriend," who arrived on the scene during the field sobriety tests. Pickett had told the officer he was "coming to get her after she was done with work." At one point, the

vehicle's owner asked the officer about the vehicle's keys. The officer testified Pickett had the keys. Pickett also testified that he had been convicted of a crime twenty-two times.

The jury found Pickett guilty of all counts. The circuit court imposed eighty days' jail on the OWI third, and the BAC count was dismissed. The court imposed only court costs on the OAR count.

The no-merit report addresses potential collateral attacks on Pickett's prior OWI convictions; speedy trial issues; sufficiency of the evidence; ineffective assistance of counsel; and whether the circuit court properly exercised its sentencing discretion. This court is satisfied that the no-merit report properly analyzes the issues raised, and we will not discuss the issues further.

Our independent review of the record discloses no other potential issue for appeal. Therefore,

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

IT IS FURTHER ORDERED that attorney Daniel Goggin II is relieved of further representing Pickett 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