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**DISTRICT III**

February 20, 2019

To:

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

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2018AP600-CRNM      State of Wisconsin v. Daniel Ross Boucher  
(L. C. No. 2016CF253)

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).**

Daniel Boucher appeals related judgments convicting him of first-degree reckless homicide, homicide by intoxicated use of a vehicle, second-offense operating a motor vehicle while intoxicated (OWI), and possession of THC.<sup>1</sup> Attorney Erica Bauer has filed a no-merit

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<sup>1</sup> Although the notice of appeal refers to a judgment in the singular, we note that the circuit court entered separate judgments for the felony and misdemeanor counts.

report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2017-18);<sup>2</sup> *Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit report sets forth the procedural history of the case in detail, and it addresses whether Boucher has any basis to challenge his pleas or sentences. Boucher was sent a copy of the report, but he has not filed a response. Upon reviewing the entire record as well as the no-merit report, we conclude that there are no arguably meritorious appellate issues.

First, we see no arguable basis for plea withdrawal. The circuit court conducted a plea colloquy, inquiring into Boucher’s ability to understand the proceedings and the voluntariness of the pleas, and further exploring his understanding of the nature of the charges, the penalty ranges and other direct consequences of the pleas, and the constitutional rights being waived. In addition, Boucher provided the court with a signed plea questionnaire, to which were attached sheets documenting the plea agreement and setting forth the elements of each offense. Boucher advised the court that he had reviewed the documents with counsel, and that he understood the information in them.

The facts set forth in the complaint and acknowledged by Boucher to be true—namely, that after consuming at least eight alcoholic beverages, Boucher drove his sport utility vehicle through a stop sign in a residential neighborhood at a high rate of speed and crashed into another vehicle, killing both of its occupants—provided a sufficient factual basis for his pleas on the homicide and OWI counts. An amended complaint set forth additional facts relating to the discovery of THC in the vehicle Boucher had been driving, which supported the possession

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<sup>2</sup> All further references in this order to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

charge as party to a crime. A second amended complaint further provided test results showing that Boucher's blood-alcohol level was 0.206 shortly after the crash.

In conjunction with the plea questionnaire and amended complaints, the plea colloquy was sufficient to satisfy the circuit court's obligations under WIS. STAT. § 971.08. *See State v. Hoppe*, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794; *State v. Moerderdorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). We also note there is nothing in the record to suggest that Boucher's trial counsel's performance was in any way deficient leading up to the plea, and Boucher has not alleged any other facts that would give rise to a manifest injustice. Therefore, the plea was valid and operated to waive any potential non-jurisdictional objections to prior proceedings in this case. *See State v. Kelty*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886.

A challenge to Boucher's sentences would also lack arguable merit. The record shows that the circuit court considered relevant sentencing factors and rationally explained their application to this case, emphasizing the seriousness of the offenses due to the loss of two lives and the "personality issue" revealed by Boucher's history of violating societal norms with defiant behavior. *See State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. The court then sentenced Boucher to consecutive terms of sixteen years of initial confinement and fifteen years of extended supervision on each of the homicide counts, and to concurrent terms of ninety days on the OWI and THC counts. In addition, the court determined that Boucher's operating license would be revoked for five years and that he would be required to install an ignition interlock device for eighteen months; ordered restitution in the amount of \$36,234; imposed \$3,409 in fines and costs; and specified several standard conditions of

supervision. The court also awarded 355 days of sentence credit, which it later amended to 357 days at Boucher's request.

The sentences and other penalties imposed did not exceed the maximum available limits. *See* WIS. STAT. §§ 940.02(1) (classifying first-degree reckless homicide as a Class B felony); 973.01(2)(b)1. and (d)1. (providing maximum terms of forty years of initial confinement and twenty years of extended supervision for a Class B felony); 940.09(1)(a) (classifying homicide by intoxicated use of a vehicle with a prior OWI conviction as a Class C felony); 973.01(2)(b)3. and (d)2. (providing maximum terms of twenty-five years of initial confinement and fifteen years of extended supervision for a Class C felony); 343.31(3)(c) (requiring five-year revocation of operating privileges for homicide by intoxicated use of a vehicle); 343.301(2m)(a) (requiring installation of ignition interlock for not less than one year and not more than the maximum period of revocation of operating privileges); 346.63(1)(a) and 346.65(2)(am)2. (setting penalty for a second OWI offense at not less than five days or more than six months with a fine of not less than \$350 or more than \$1,100); 346.65(2)(g)(2) (tripling fine amounts if blood alcohol level was between 0.20 and 0.249); and 961.41(3g)(3); (setting penalty for possession of THC at up to six months' imprisonment with a fine not more than \$1,000). Nor were the sentences unduly harsh, taking into account that two people were killed and that the State dismissed and read in an additional fifteen counts as part of the plea agreement. *See generally State v. Grindemann*, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507.

Upon an independent review of the record, we have found no other arguable basis for reversing the judgments of conviction. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

Accordingly,

IT IS ORDERED that the judgments of conviction are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Erica Bauer is relieved of any further representation of Daniel Boucher in this matter pursuant to 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*