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**DISTRICT IV**

February 22, 2019

To:

Hon. William F. Hue  
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Jefferson County Courthouse  
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You are hereby notified that the Court has entered the following opinion and order:

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2018AP437-CRNM	State of Wisconsin v. Andre D. Bailey (L.C. # 2016CM159)
2018AP438-CRNM	State of Wisconsin v. Andre D. Bailey (L.C. # 2015CT571)

Before Lundsten, P.J.<sup>1</sup>

**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).**

Andre Bailey appeals two judgments in companion cases convicting him of a second offense of operating a motor vehicle while intoxicated (OWI) and possession of a firearm while

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<sup>1</sup> These appeals are decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) and (f) (2017-18). All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

intoxicated. Attorney Vicki Zick has filed a no-merit report in each case seeking to withdraw as appellate counsel. See WIS. STAT. RULE 809.32; *Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit reports address a suppression ruling and Bailey's sentences. Bailey was sent copies of the reports, but has not filed a response. Upon reviewing both records, as well as the no-merit reports, I conclude that there are no arguably meritorious appellate issues.

First, although counsel does not address the issue, I see no arguable basis for plea withdrawal. The circuit court conducted a joint plea colloquy, inquiring into Bailey's ability to understand the proceedings and the voluntariness of his 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, Bailey provided the court two signed plea questionnaires with attachments setting forth the elements of the offenses. The facts set forth in the complaints—namely, that police found Bailey sleeping in the driver's seat of his vehicle while it was parked at a gas station pump and, during their subsequent interactions with him, further discovered that he was intoxicated and had a firearm in the compartment of his door—provided a sufficient factual basis for the pleas. In conjunction with the plea questionnaires and complaints, the colloquy was sufficient to satisfy the 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. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). I further note that there is nothing in the record to suggest that trial counsel's performance was in any way deficient leading up to the pleas, and Bailey has not alleged any other facts that would give rise to a manifest injustice.

Next, I agree with counsel's discussion and conclusion that the circuit court properly denied Bailey's suppression motion. The facts in this case are indistinguishable in any

significant respect from those in *County of Grant v. Vogt*, 2014 WI 76, ¶54, 356 Wis. 2d 343, 850 N.W.2d 253, which held that an officer knocking on the window of a car to check on the driver's welfare did not constitute a seizure for Fourth Amendment purposes.

Finally, a challenge to Bailey's sentences would also lack arguable merit because the circuit court followed the joint recommendation of the parties and sentenced Bailey to 30 days in jail on the OWI charge and 15 days in jail on the firearm charge. A defendant may not challenge on appeal a sentence that he affirmatively approved. *State v. Scherreiks*, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989).

Upon an independent review of the records, I have found no other arguable basis for reversing the judgments of conviction. I 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 Vicki Zick is relieved of any further representation of Andre Bailey in these matters 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*