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DISTRICT II

March 4, 2020

To:

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

2019AP1341-CRNM State of Wisconsin v. Quentin L. Collins (L.C. #2016CT1455)

Before Neubauer, C.J.[1]

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).

Quentin L. Collins appeals from a judgment convicting him of operating a motor vehicle while intoxicated as a third offense. His appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and ***Anders v. California***, 386 U.S. 738 (1967). Collins received a

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2017-18). All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the report and an independent review of the record, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment. WIS. STAT. RULE 809.21.

Collins was convicted following a jury trial of operating a motor vehicle while intoxicated as a third offense. The circuit court imposed a sentence of 330 days in jail, a 3-year license revocation, a 3-year interlock device, and a fine of $600 plus costs and assessments. This no-merit appeal follows.

The no-merit report addresses whether the evidence at Collins' jury trial was sufficient to support his conviction. When reviewing the sufficiency of the evidence, we may not substitute our judgment for that of the jury "unless the evidence, viewed most favorably to the state and the conviction, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt." ***State v. Poellinger***, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990). Our review of the trial transcripts persuades us that the State produced ample evidence to convict Collins of his crime. That evidence included testimony from the investigating officer who discovered Collins alone by his damaged vehicle on the side of the road and heard him admit that he had consumed "two beers" and "just hit something in the roadway." The officer also observed Collins stumble around with bloodshot, glassy eyes and a slow, slurred speech. A consensual blood draw later revealed an alcohol concentration of 0.176 grams per 100 milliliters of blood. We agree with counsel that a challenge to the sufficiency of the evidence would lack arguable merit.

The no-merit report also addresses whether the circuit court properly exercised its discretion at sentencing. The record reveals that the court's sentencing decision had a "rational and explainable basis." ***State v. Gallion***, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (citation omitted). In fashioning its sentence, the court considered the seriousness of the offense, Collins' character, and the need to protect the public. ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Under the circumstances of the case, which were aggravated by Collins' high blood alcohol concentration and prior record, the sentence imposed does not "shock public sentiment and violate the judgment of reasonable people concerning what is right and proper." ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We agree with counsel that a challenge to Collins' sentence would lack arguable merit.

Finally, the no-merit report addresses several other issues, including (1) whether Collins' statement to police during field sobriety testing was admissible at trial;[2] (2) whether the circuit court allowed a juror to serve who did not sufficiently understand the English language;[3] and (3) whether the court properly admitted questions about a defense witness's criminal history when he failed to state the correct number of his prior convictions, which had been determined at a hearing before his testimony. We agree with counsel that these issues do not have arguable merit for appeal, and we will not discuss them further.

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[2] When instructed to perform the walk and turn test, Collins told the investigating officer, "You already know what it is, just arrest me."

[3] Defense counsel expressed concern about one juror's language capacity. After a colloquy with that juror, the circuit court was satisfied that he sufficiently understood English. The court's finding was not clearly erroneous. The juror was a U.S. citizen who had been in the country for over forty years, spoke English every day, did not believe that he needed an interpreter, and had served on two prior juries.

Our review of the record—including jury instructions, Collins' waiver of his right to testify, and opening statements/closing arguments—does not disclose any potentially meritorious issue for appeal. Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report and relieve Attorney Sarah Zwach of further representation in this appeal.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Sarah Zwach is relieved of further representation of Quentin L. Collins in this appeal. *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