



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 IV

March 16, 2020

To:

Hon. Jon M. Counsell
Circuit Court Judge
Clark County Courthouse
517 Court St.
Neillsville, WI 54456

Lisa M. Roth
Clerk of Circuit Court
Portage Co. Courthouse
1516 Church Street
Stevens Point, WI 54481-3598

Cass Cousins
Assistant District Attorney
1516 Church St.
Stevens Point, WI 54481-3501

William J. Donarski
The Law Office of William J. Donarski
2221 S. Webster Ave., #166
Green Bay, WI 54301

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

Nicholas S. Felella
5310 Patti Dr., Apt. 4
Plover, WI 54467

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

2018AP1459-CRNM	State of Wisconsin v. Nicholas S. Felella (L.C. # 2016CF286)
2018AP1460-CRNM	State of Wisconsin v. Nicholas S. Felella (L.C. # 2016CF299)

Before Fitzpatrick, P.J., Blanchard, and Nashold, 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).

In these consolidated appeals, Nicholas S. Felella, appeals from two judgments entered upon his guilty pleas to three offenses: operating a motor vehicle with a restricted controlled substance in his blood as a fifth offense (OWI 5th); felony bail jumping; and possession of

cocaine, a misdemeanor. Felella's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2017-18),¹ and *Anders v. California*, 386 U.S. 738 (1967). Felella received a copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the no-merit report and our independent review of the records, we conclude that the judgments may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal.

The State filed two complaints charging Felella with crimes stemming from two incidents that occurred in July 2016. One incident involved Felella as the driver of a vehicle in a two-car collision, and the other arose from a domestic incident at Felella's home. Felella was charged with twelve counts across the two cases. As part of a negotiated agreement, he pled guilty to OWI 5th, a Class H felony, felony bail jumping, a class H felony, and possession of cocaine, an unclassified misdemeanor. The remaining counts, as well as two other criminal cases and two separate forfeiture matters, were dismissed and read in. The circuit court adopted the parties' joint sentencing recommendation and ordered the following: (1) on the OWI 5th, nine months in jail with 291 days of presentence credit (effectively, time served), and a \$600 fine plus costs; (2) on the felony bail jumping, a withheld sentence with eighteen months of probation; and (3) on the possession of cocaine, a withheld sentence with one year of probation.

The no-merit report discusses whether Felella's guilty pleas were knowing, intelligent, and voluntary. The circuit court engaged in a thorough colloquy that satisfied the requirements of WIS. STAT. § 971.08(1); *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

906; and *State v. Hampton*, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. (R.110: 5-19; App 123-37) In addition to its substantive plea-taking colloquy, the circuit court properly relied on Felella’s signed plea questionnaire. See *State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). There is no indication of any other basis for plea withdrawal. Accordingly, we agree with counsel’s assessment that a challenge to Felella’s pleas would lack arguable merit.

Appellate counsel’s no-merit report also addresses whether the circuit court properly exercised its discretion at sentencing. We agree with counsel that a challenge to Felella’s sentence would lack arguable merit. The court imposed a sentence in accordance with Felella’s own recommendation. See *State v. Scherreiks*, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989) (a defendant may not challenge on appeal a sentence that he affirmatively approved). Additionally, Felella’s sentence is not reasonably characterized as so excessive as to shock public sentiment. See *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

The no-merit report also discusses other potential issues “identified by either the defendant-appellant, and/or counsel[,]” including: the propriety and constitutionality of the statute prohibiting a person from driving with a detectable amount of a restricted controlled substance in his or her blood; the viability of Felella’s four prior OWI offenses used to enhance his penalty; whether there was a *Riverside*² violation; and if Felella’s claimed status as a “sovereign citizen” alters his rights or responsibilities. We agree with appellate counsel’s analysis of these points as lacking any arguable merit and will not further discuss them.

² *City of Riverside v. McLaughlin*, 500 U.S. 44 (1991).

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

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

IT IS FURTHER ORDERED that Attorney William J. Donarski is relieved from further representing Nicholas S. Felella, in these consolidated appeals. 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