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DISTRICT III

May 5, 2020

To:

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

2018AP2034-CRNM State of Wisconsin v. Stephanie Denise Smith
(L. C. No. 2017CF778)

Before Hruz, 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).

Counsel for Stephanie Denise Smith has filed a no-merit report concluding there is no basis to challenge Smith's conviction for second-offense operating a motor vehicle while intoxicated (OWI) with a minor child in the vehicle. Smith was advised of her right to respond

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

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 we summarily affirm. See WIS. STAT. RULE 809.21.

Smith was initially charged with third-offense OWI with a minor child in the vehicle after refusing to submit to a preliminary breath test and a chemical test of her blood. A warrant was obtained and a blood test was taken. At Smith's arraignment, an amended Information was filed adding a penalty enhancer for an excessive blood-alcohol level. A second count was also added for third-offense operating with a prohibited alcohol concentration with a minor child in the vehicle, and with an excessive-alcohol-level enhancer. Records were subsequently received from the State of New York, where Smith previously resided, revealing that Smith had been previously convicted of only one OWI. Smith ultimately pleaded no contest to second-offense OWI with a minor child in the vehicle. The circuit court imposed a sentence consisting of a \$900 fine and nine months in jail, with Huber privileges.

The no-merit report addresses whether the plea was knowingly, intelligently, and voluntarily entered; whether the circuit court properly exercised its sentencing discretion; and whether Smith's trial counsel was ineffective regarding his efforts to investigate Smith's prior OWI convictions. This court is satisfied that the no-merit report properly analyzes the issues raised, and we will not discuss them further.²

Our independent review of the record discloses no other potential issues for appeal.

² Although not addressed in the no-merit report, the circuit court failed to personally advise Smith of the potential deportation consequences of her plea, as mandated by WIS. STAT. § 971.08(1)(c). However, we have determined that Smith was born in the United States, and no arguable issue therefore arises from the court's failure regarding the deportation consequences.

Therefore,

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

IT IS FURTHER ORDERED that attorney Daniel Goggin II is relieved of his obligation to further represent Stephanie Smith 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