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DISTRICT I

September 9, 2020

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

2018AP2356-CRNM State of Wisconsin v. Nicholas Stanley Rankovich
(L.C. # 2017CF4019)

Before Brash, P.J., Dugan and White, 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).

Nicholas Stanley Rankovich appeals from a judgment convicting him of operating a motor vehicle while intoxicated (OWI) as a seventh offense. His appellate counsel filed a no-merit report

pursuant to WIS. STAT. RULE 809.32 (2017-18),¹ and *Anders v. California*, 386 U.S. 738 (1967). Rankovich received a copy of the report and filed a response. Upon consideration of the report, the response, and an independent review of the record as mandated by *Anders*, we conclude that the judgment may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

The criminal complaint alleged that shortly after midnight on August 27, 2017, police were investigating a burglary. While searching for a suspect, an officer came upon a parked vehicle with the engine running. After determining that the vehicle was not registered, the officer activated his emergency lights and approached it. Rankovich was in the driver's seat and the officer observed that he smelled strongly of alcohol and had slurred speech and glassy eyes. Rankovich was not able to successfully perform the field sobriety tests and provided a preliminary breath test sample that registered at 0.184. Rankovich, who the complaint alleged had six prior OWI convictions, was arrested and charged with OWI as a seventh offense.

Rankovich pled guilty to the charge and was sentenced to nine years of imprisonment comprised of four years of initial confinement and five years of extended supervision. The trial court made him ineligible for Early Release Programming (ERP), concluding that because this was Rankovich's seventh offense, early release was no longer appropriate.

The no-merit report addresses the potential issues of whether Rankovich's plea was knowingly, voluntarily, and intelligently entered and whether the sentence was the result of an

¹ The no-merit report was filed by Attorney Nicole M. Masnica, who has been replaced by Attorney Andrea Taylor Cornwall as Rankovich's appellate counsel. All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

erroneous exercise of discretion. This court is satisfied that the no-merit report properly analyzes the issues it raises as without merit, and we discuss the sentencing issue further only to briefly elaborate on points that Rankovich raised in his no-merit response. We additionally note that although the no-merit report does not analyze this issue, we have also considered whether the trial court properly denied Rankovich's suppression motion and conclude that there is no arguable merit to a challenge on that basis.

In his response, Rankovich writes that he is eighty-six percent deaf and "missed a lot at [his] sentencing hearing." During the combined plea and sentencing hearing, Rankovich flagged for the trial court that he was "really hard of hearing" and that his hearing aid was broken. The transcript reflects that a real time translation began shortly thereafter. There is no indication in the record that Rankovich had additional problems from that point forward.

Rankovich further advises that the only issue he wishes to pursue in an appeal is a challenge to the circuit court's decision to deny him eligibility for ERP. However, our review of the record reveals that the trial court properly exercised its discretion in this regard. See *State v. Owens*, 2006 WI App 75, ¶6, 291 Wis. 2d 229, 713 N.W.2d 187 (explaining that a trial court's decision as to a defendant's eligibility for ERP is part of the court's exercise of its sentencing discretion).

We see no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the conviction, and discharges appellate counsel of the obligation to represent Rankovich further in this appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Cornwall is relieved from further representing Rankovich in this appeal. *See* WIS. STAT. RULE 809.32(3).

Sheila T. Reiff
Clerk of Court of Appeals