



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

December 3, 2020

To:

Hon. Thomas T. Flugaur
Circuit Court Judge
Portage Co. Courthouse
1516 Church Street
Stevens Point, WI 54481-3598

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

Peter Anderson
The Fitzgerald Law Firm
2031 Riverside Dr., Ste. A
Beloit, WI 53511

Kristian Rus Mukoski
Assistant District Attorney
1516 Church St.
Stevens Point, WI 54481

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

Fred A. Haessly 125629
Stanley Correctional Inst.
100 Corrections Dr.
Stanley, WI 54768

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

2019AP1074-CRNM State of Wisconsin v. Fred A. Haessly (L.C. # 2017CF364)

Before Fitzpatrick, P.J., Graham, 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).

Attorney Pete Anderson, appointed counsel for Fred Haessly, has filed a no-merit report seeking to withdraw as appellate counsel pursuant to WIS. STAT. RULE 809.32 (2017-18)¹ and *Anders v. California*, 386 U.S. 738 (1967). Haessly was sent a copy of the report and has not

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

filed a response. Upon consideration of the report and an independent review of the record, we conclude that there is no arguable merit to any issue that could be raised on appeal.

Haessly was charged with one count of operating a motor vehicle with a prohibited alcohol concentration and one count of operating a motor vehicle while under the influence of an intoxicant, both as a fifth or sixth offense, based on an incident in July 2017.² The case proceeded to a jury trial, and the jury found Haessly guilty on both counts. The circuit court dismissed the PAC count and sentenced Haessly on the remaining count to a prison term consisting of two years of initial confinement and three years of extended supervision. Additionally, the court imposed a \$1,000 fine.

We turn first to the sufficiency of the evidence. The no-merit report does not address this issue. However, based upon our independent review of the record, we conclude that the issue has no arguable merit. When addressing sufficiency of the evidence, an appellate court will not overturn a conviction “unless the evidence, viewed most favorably to the state and the conviction, is so insufficient in probative value and force that it can be said as a matter of law that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt.” *State v. Poellinger*, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). Without reciting all of the trial evidence here, we are satisfied that it was sufficient.

The no-merit report addresses whether Haessly’s rights were violated because trial counsel refused to allow Haessly to testify. We agree with no-merit counsel that there is no arguable merit to this issue. There is nothing before us indicating that Haessly’s trial counsel

² The parties stipulated that Haessly had five prior offenses.

refused to allow him to testify. Rather, the record reflects that Haessly knowingly and voluntarily waived his right to testify after the circuit court conducted a colloquy with Haessly regarding his right to testify or not testify. During the colloquy, Haessly personally indicated on the record that he understood that the decision not to testify was ultimately his decision to make.

The no-merit report next addresses whether trial counsel was ineffective in her presentation of Haessly's defense. We are satisfied that the no-merit report properly analyzes this issue as having no arguable merit. There is nothing before us to suggest that trial counsel failed to call additional witnesses or failed to present other evidence that would have bolstered Haessly's defense.

Our review of the record discloses no other issues of arguable merit with respect to events before or during trial. We see no basis to challenge the circuit court's pretrial rulings, jury selection, the circuit court's evidentiary rulings at trial, or the arguments made to the jury.

We turn to sentencing. The no-merit report does not address sentencing. Regardless, based upon our independent review of the record, we see no non-frivolous ground on which Haessly might challenge the circuit court's exercise of its sentencing discretion. The court discussed the required sentencing factors along with other relevant factors, and the court did not rely on any inappropriate factors. See *State v. Gallion*, 2004 WI 42, ¶¶37-49, 270 Wis. 2d 535, 678 N.W.2d 197. We see no other arguable basis for Haessly to challenge his sentence.

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

Therefore,

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

IT IS FURTHER ORDERED that Attorney Pete Anderson is relieved of any further representation of Fred Haessly 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