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DISTRICT III

December 8, 2020

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

2019AP1189-CRNM State of Wisconsin v. Michael K. Wolf, Jr. (L. C. No. 2018CT48)

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).

Attorney William Donarski, appointed counsel for Michael Wolf, Jr., has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 concluding that there is no arguable merit to any

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.

issues challenging Wolf's conviction for operating a motor vehicle while under the influence of an intoxicant (OWI), as a second offense. Wolf was informed of his right to respond to the report, but he has not responded. Upon consideration of the report and an independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude that there is no arguable merit to any issue that could be raised on appeal. Accordingly, we summarily affirm.

Wolf was charged with one count of OWI and one count of operating with a prohibited alcohol concentration (PAC), both as second offenses, based on an incident in January 2018. The case proceeded to a jury trial, and the jury found Wolf guilty on both counts. The circuit court dismissed the PAC count and sentenced Wolf on the remaining OWI count to thirty days in jail. Additionally, the court required Wolf to pay a fine and costs totaling \$1,429, and it revoked Wolf's operating license for twelve months.

The no-merit report first addresses whether the evidence was sufficient to support Wolf's conviction. We agree with counsel that there is no arguable merit to this issue. Our review of the sufficiency of the evidence is highly deferential. We will not overturn a conviction "unless the evidence, viewed most favorably to the [S]tate 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." *See State v. Poellinger*, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990).

Here, there was ample evidence from which the jury could reasonably find that Wolf was operating a motor vehicle under the influence of an intoxicant. The arresting officer testified that Wolf sped through an intersection as the light turned red, accelerating to forty-four miles per

hour in a twenty-five-mile-per-hour zone; that Wolf took longer than average to pull over after the officer activated his squad-car lights; and that Wolf pulled over too far, going up on a curb and then coming back down. The officer further testified that after stopping Wolf, the officer noticed a number of additional signs of intoxication: he smelled an odor of intoxicants coming from Wolf's breath, Wolf's speech was a "little bit" slurred, Wolf's eyes were bloodshot and glassy, and Wolf's movements were a little slower than normal. Additionally, the officer testified that he conducted the horizontal gaze nystagmus field sobriety test, and that Wolf exhibited all six "clues" for intoxication.² The officer concluded, based on all his observations, that Wolf was impaired and could not safely operate a motor vehicle.

The jury also heard evidence regarding a test of Wolf's blood for its alcohol content. There was evidence that Wolf's blood sample was obtained about thirty-five minutes after he was stopped.³ A State hygiene laboratory chemist supervisor testified that Wolf's blood sample yielded a result of 0.086 grams per 100 milliliters of blood. Finally, the supervisor testified that impairment can occur at or below a 0.08 level.

The no-merit report next addresses whether the State adequately proved Wolf's prior conviction for OWI. We agree with counsel that there is no arguable merit to this issue. The State submitted competent proof of the prior conviction, and Wolf personally admitted to the conviction on the record.

² The officer stated that he did not perform additional field sobriety tests because one of Wolf's legs was amputated.

³ Although the no-merit report does not address whether there is any basis to challenge the legality of Wolf's blood draw, our review of the record discloses no arguable basis upon which to challenge its legality.

The no-merit report next addresses whether there is any basis to argue that Wolf's trial counsel was constitutionally ineffective. We are satisfied that the no-merit report properly analyzes this issue as having no arguable merit. There is nothing before us to support an allegation of ineffective assistance of counsel.

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, the jury selection, the court's evidentiary rulings at trial, Wolf's waiver of his right to testify, the jury instructions, or the parties' arguments made to the jury.

We now turn to sentencing. The no-merit report addresses whether Wolf's sentence was unduly harsh or excessive, whether the circuit court otherwise misused its sentencing discretion, and whether there is any new factor to justify sentence modification. We agree with counsel that there is no arguable merit to any of these issues. Wolf's sentence was well within the maximum. 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. Nothing before us shows the existence of any possible new factor. Finally, we perceive no other arguable basis for Wolf 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. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney William Donarski is relieved of any further representation of Michael Wolf, Jr., 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