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**DISTRICT II**

March 10, 2021

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

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2019AP137-CRNM      State v. Troy L. Schmidt (L.C. #2014CF767)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

**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).**

Following a court trial, Troy L. Schmidt appeals a judgment convicting him of attempting to flee or elude a traffic officer and first-degree recklessly endangering safety, both as a repeater. Schmidt's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2017-

18)<sup>1</sup> and *Anders v. California*, 386 U.S. 738 (1967). Schmidt received a copy of the report, was advised of his right to respond, and has not filed a response. Upon consideration of the no-merit report and our independent review of the record, 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.

Officers in a marked squad car attempted to effectuate a traffic stop on a car traveling at a high rate of speed. The car increased its speed and ran through a four-way stop. The chase continued, with the car crossing the center lane and traveling in excess of ninety miles per hour. Officers pursued the car for almost five miles until it crashed and landed on its roof. A third officer arrived to see the engine compartment igniting. They tried to extinguish the fire and were able to pull Schmidt, the sole occupant, out of the car through a window. Officers found a bag of marijuana about ten feet away from the car. The State filed an information charging Schmidt with attempting to flee or elude a traffic officer (count one), first-degree recklessly endangering safety (count two), and possession of marijuana (count three), all with the repeater enhancer. A number of traffic tickets, including a citation for operating a motor vehicle while intoxicated as a first offense, tracked the criminal case.

At trial counsel's request, the circuit court ordered a competency evaluation. The examining psychologist, Dr. Christina Engen, filed a report opining that Schmidt was competent to proceed. Trial counsel attempted but was unable to retain an expert to render a contrary opinion. At a competency hearing, Engen testified that "Mr. Schmidt was quite well versed with

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2017-18 version.

all of the basic elements of competency” such as “the charges against him, potential penalties, the role of the Court, principles, pleas that he could enter and plea bargaining.” Engen opined that Schmidt would be able to assist in his defense because his comments “were coherent, rational, were well thought out.” The court determined that Schmidt was competent to proceed.

Schmidt waived his right to a jury trial and had a two-day trial to the circuit court. The court found him guilty of attempting to flee or elude a traffic officer and first-degree recklessly endangering safety, but not guilty of possessing THC. At sentencing, the court imposed the following: on count one, eighteen months of initial confinement followed by two years of extended supervision; on count two, five years of initial confinement followed by five years of extended supervision, to run concurrent with count one, but consecutive to any previously imposed sentence. On the State’s motion, the court dismissed all traffic citations, including the OWI violation.<sup>2</sup> This no-merit appeal follows.

Appellate counsel’s no-merit report addresses whether the evidence at trial was sufficient to support Schmidt’s convictions. We must affirm the verdict unless the evidence, viewed most favorably to the State and the conviction, is so insufficient in probative value and force that as a matter of law no reasonable trier of fact could have found guilt beyond a reasonable doubt. *State v. Poellinger*, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). When acting as fact finder, the circuit court is the ultimate arbiter of witness credibility. *State v. Peppertree Resort Villas, Inc.*, 2002 WI App 207, ¶19, 257 Wis. 2d 421, 651 N.W.2d 345. “When more than one reasonable

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<sup>2</sup> The State informed the circuit court that blood taken from Schmidt less than one hour after the crash indicated a blood-alcohol concentration of .05 grams per milliliter.

inference can be drawn from the credible evidence, the reviewing court must accept the inference drawn by the trier of fact.” *Id.* (citation omitted).

Without attempting to recite the evidence in detail here, we are satisfied that the testimony of the three officers, along with the properly-admitted exhibits, was sufficient to support the convictions. The testimony was not inherently incredible and, if believed by the circuit court, was sufficient to meet all the elements of the charges of conviction. We agree with appellate counsel that a challenge to the sufficiency of the evidence would lack arguable merit.

The no-merit report also addresses whether the circuit court properly exercised its discretion in determining that Schmidt was competent to proceed. Having independently reviewed the record, we conclude that appellate counsel’s no-merit report properly analyzes this potential issue as without arguable merit and this court will not discuss this point further.

Counsel’s no-merit report concludes with a discussion of whether Schmidt’s sentence was the result of an erroneous exercise of discretion. The record reveals that the circuit court’s sentencing decision had a “rational and explainable basis.” *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (citation omitted). In making its decision, the court considered the seriousness of the offenses, Schmidt’s character, and the need to protect the public. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Under the circumstances of the case, which were aggravated by Schmidt’s lengthy criminal record and history of unsuccessful correctional interventions, the sentence imposed does not “shock public sentiment and violate the judgment of reasonable people concerning what is right and proper.” *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We agree with appellate counsel that a challenge to Schmidt’s sentence would lack arguable merit.

In addition to the foregoing issues, we considered other potential issues that arise in cases tried to the court, e.g., evidentiary rulings at trial, confirmation that the defendant's waiver of the right to testify is valid, and use of proper jury instructions. Based on counsel's no-merit report and our independent record review, we conclude that none of these potential points gives rise to an issue of arguable merit.

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

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

IT IS FURTHER ORDERED that Attorney Marcella De Peters is relieved from further representing Troy L. Schmidt in this appeal. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*