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DISTRICT III

September 28, 2021

To:

Hon. Mark J. McGinnis
Circuit Court Judge
Electronic Notice

Barb Bocik
Clerk of Circuit Court
Outagamie County Courthouse
Electronic Notice

Winn S. Collins
Electronic Notice

Melinda J. Tempelis
Electronic Notice

Angela Dawn Wenzel
Electronic Notice

Joseph M. Konetzke 671823
Fox Lake Correctional Inst.
P.O. Box 200
Fox Lake, WI 53933-0200

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

2019AP319-CRNM State of Wisconsin v. Joseph M. Konetzke
(L. C. No. 2017CF1036)

Before Stark, P.J., Hruz and Gill, 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).

Counsel for Joseph Konetzke filed a no-merit report concluding no grounds exist to challenge Konetzke's two convictions of homicide by intoxicated use of a vehicle while having a prior intoxicant-related conviction. Konetzke was informed of his right to file a response to the no-merit report 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 arguable merit to any issue

that could be raised on appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21 (2019-20).¹

An amended Information charged Konetzke with two counts of homicide by intoxicated use of a vehicle while having a prior intoxicant-related conviction, and two counts of homicide by intoxicated use of a vehicle with a prohibited alcohol concentration (“PAC”) while having a prior intoxicant-related conviction. The charges arose from the deaths of David Rosol and Hazel DeWitt following a collision between their car and Konetzke’s car after Konetzke failed to obey a stop sign. In the month before the collision, Konetzke had been convicted of operating while intoxicated (“OWI”), and he had another OWI charge pending.² In exchange for Konetzke’s no-contest pleas to the two counts of homicide by intoxicated use, as charged in the amended Information, the State agreed to recommend twenty years’ initial confinement and ten years’ extended supervision. Out of a maximum possible eighty-year sentence, the circuit court imposed thirty-year sentences consisting of twenty years’ initial confinement followed by ten years’ extended supervision, with the sentences to be served concurrent to each other but consecutive to any sentence Konetzke was already serving.³

The no-merit report addresses whether Konetzke knowingly, intelligently and voluntarily entered his no-contest pleas, and whether there is any arguable merit to challenge the sentences imposed. Upon reviewing the record, we agree with counsel’s description, analysis, and

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

² Konetzke was also convicted of OWI in February 2001.

³ The PAC counts were dismissed prior to sentencing on the State’s motion pursuant to WIS. STAT. § 940.09(1m)(b), which provides that if a person is found guilty of both offenses “for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing[.]”

conclusion that neither of these issues has arguable merit. We note that the circuit court failed to advise Konetzke of the deportation consequences of his pleas, as mandated by WIS. STAT. § 971.08(1)(c). However, in order to obtain relief because of such an omission, a defendant must show that his or her plea is likely to result in deportation, exclusion from admission to this country, or denial of naturalization. *See State v. Negrete*, 2012 WI 92, ¶26, 343 Wis. 2d 1, 819 N.W.2d 749. There is nothing in this record to suggest that Konetzke is not a citizen of the United States.

We also note that as a condition of Konetzke's extended supervision, the circuit court ordered, among other things, that Konetzke not operate a motor vehicle. The court explained it wanted to minimize Konetzke's "risk of hurting other people." Although the court acknowledged that such a condition is "a little bit different," it believed the condition was "absolutely critical for protection of the community." Based on this record, there is no arguable merit to any claim that this or any other condition of extended supervision was not "reasonable and appropriate" under the circumstances of this case. *See State v. Koenig*, 2003 WI App 12, ¶7, 259 Wis. 2d 833, 656 N.W.2d 499 (2002). The no-merit report otherwise sets forth an adequate discussion of the potential issues to support the no-merit conclusion, and we need not address them further. Our independent review of the record discloses no other potential issue for appeal.

Therefore,

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

IT IS FURTHER ORDERED that attorney Angela Dawn Wenzel is relieved of her obligation to further represent Joseph Konetzke 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