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**DISTRICT II**

April 27, 2022

To:

Hon. Daniel J. Borowski  
Circuit Court Judge  
Electronic Notice

Melody Lorge  
Clerk of Circuit Court  
Sheboygan County Courthouse  
Electronic Notice

Winn S. Collins  
Electronic Notice

Pamela Moorshead  
Electronic Notice

Richard Scott Upson, #171273  
Prairie Du Chien Correctional Inst.  
P.O. Box 9900  
Prairie du Chien, WI 53821

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

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2021AP1611-CRNM      State of Wisconsin v. Richard Scott Upson (L.C. #2020CF566)

Before Gundrum, P.J., Grogan and Kornblum, 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).**

Richard Scott Upson appeals a judgment of conviction for sixth-offense operating while intoxicated (OWI) and operating while revoked (OAR). Upson's appointed appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20)<sup>1</sup> and *Anders v. California*, 386 U.S. 738 (1967). Upson was advised of his right to file a response but has not done so. Upon consideration of the no-merit report and an independent review of the record as

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

mandated by *Anders* and RULE 809.32, we conclude there is no arguable merit to any issue that could be raised on appeal and summarily affirm the judgment. *See* WIS. STAT. RULE 809.21(1).

Upson was involved in a motorcycle crash. Authorities noticed indicia of intoxication, and Upson attempted to flee the scene but was apprehended. Police discovered he had five prior OWI convictions and obtained a warrant for a blood draw. After testing showed a blood alcohol content of .171, the State filed an amended criminal complaint and Information charging Upson with sixth-offense OWI, sixth-offense operating with a prohibited alcohol concentration (PAC), OAR, and obstructing an officer.

Pursuant to a plea agreement with the State, Upson pled guilty to the OWI and OAR charges, with the PAC charge dismissed outright and the obstruction charge dismissed and read in. The State agreed to recommend a seven-year term of imprisonment for the OWI conviction, consisting of three years' initial confinement and four years' extended supervision. The State also agreed to recommend a thirty-day jail sentence on the OAR conviction to run concurrent to the OWI sentence. There was no recommendation as to whether the prison sentence would run concurrent or consecutive to any other sentence Upson was then serving.

Following a thorough colloquy, the circuit court accepted Upson's pleas and adjudged him guilty. After ordering a presentence investigation (PSI), the circuit court elected to follow the PSI author's recommendation and imposed a sentence consisting of five years' initial confinement and four years' extended supervision on the OWI conviction, consecutive to any other sentence. It also imposed a consecutive nine-month jail sentence on the OAR conviction and ordered a \$3,000 fine. Upson was deemed ineligible for the challenge incarceration and

substance abuse programs, with the court reasoning that Upson posed a substantial risk to the public that warranted the full term of initial confinement imposed.

The no-merit report addresses whether Upson could raise nonfrivolous arguments regarding: (1) the sufficiency of the plea colloquy; (2) whether Upson's pleas were knowing, intelligent, and voluntary; (3) whether there was a sufficient factual basis for the pleas; and (4) whether the circuit court erroneously exercised its sentencing discretion. Our review of the appellate record satisfies us that the no-merit report sufficiently analyzes these issues and properly concludes that any challenge predicated upon them would lack arguable merit. Our review of the appellate record discloses no other potentially meritorious issues for appeal.

Based upon the foregoing,

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

IT IS FURTHER ORDERED that Attorney Pamela Moorshead is relieved from further representing Richard Scott Upson 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*