



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 II

June 29, 2022

To:

Hon. Karen L. Seifert
Circuit Court Judge
Electronic Notice

Tara Berry
Clerk of Circuit Court
Winnebago County
Electronic Notice

Carlos Bailey
Electronic Notice

Winn S. Collins
Electronic Notice

Brandon L. Clough
621 Fairview Ave.
Neenah, WI 54956

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

2021AP1575-CRNM State of Wisconsin v. Brandon L. Clough (L.C. #2019CF97)

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).

Brandon L. Clough appeals a judgment of conviction for fifth-offense operating while intoxicated (OWI) with a minor in the vehicle. Clough's appointed appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20)¹ and *Anders v. California*, 386 U.S. 738 (1967). Clough was advised of his right to file a response but has not done so. Upon consideration of the no-merit report and our independent review of the record as mandated by

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

Anders, we conclude there is no issue of arguable merit that could be raised on appeal. We therefore summarily affirm the judgment. *See* WIS. STAT. RULE 809.21(1).

Clough was charged in an amended criminal complaint with fifth-offense OWI and fifth-offense operating with a prohibited alcohol concentration (PAC), both modified by a penalty enhancer for having a minor child in the car. The complaint alleged that a citizen witness had called the police after Clough nearly rear-ended her and hit a snow bank. She followed Clough as he entered a Walmart parking lot and hit a parked car before entering the store. Police made contact with Clough, who admitted to drinking on Lake Winnebago prior to driving to Walmart and to having his two children in his vehicle while driving. Clough showed indicia of impairment during field sobriety testing, declined to submit to a preliminary breath test, and was arrested on suspicion of OWI. He was transported to a hospital for a blood draw, for which police obtained a search warrant. Testing showed a blood alcohol level of .143.

Clough requested that the preliminary hearing be adjourned several times so that he could obtain private counsel, but he ultimately elected to proceed with appointed counsel. After litigating a variety of bond matters, Clough entered into a plea agreement with the State under which he would plead no contest to the OWI count, with the State agreeing to dismiss the PAC count and another matter and to request a presentence investigation (PSI). The PSI recommended that Clough receive a sentence consisting of three years' each initial confinement and extended supervision. At the sentencing hearing, the parties jointly recommended a four-

year term of probation with one year in jail as a condition,² primarily for the benefit of Clough's two children. The court accepted the recommended term of probation and conditional jail time, but imposed and stayed a sentence consistent with that recommended by the Department of Corrections.

After appellate counsel filed a no-merit notice of appeal, he filed a motion to dismiss the no-merit appeal, withdraw as counsel, and extend the deadline to file an appeal or postconviction motion. Counsel stated that it was Clough's desire to retain private counsel and seek postconviction relief. We issued an order advising Clough of the difficulties of self-representation, *see State v. Klessig*, 211 Wis. 2d 194, 564 N.W.2d 716 (1997), and required Clough to advise us whether he wished to discharge appointed counsel. Clough did not respond, and we ordered that the matter continue as a no-merit appeal.

The no-merit report addresses whether Clough could raise nonfrivolous arguments related to: (1) the sufficiency of the plea colloquy; (2) whether his plea was knowing, intelligent and voluntary; (3) whether the circuit court properly exercised its sentencing discretion; and (4) whether the court considered accurate information at sentencing.³ Our review of the appellate record satisfies us that the no-merit report sufficiently analyzes these issues and properly concludes that any challenge based upon them would lack arguable merit. Our review of the appellate record discloses no other potentially meritorious issues for appeal.

² At the time of Clough's offense, the minimum term of imprisonment for fifth-offense OWI as modified by the minor child penalty enhancer was one year. *See* WIS. STAT. § 346.65(2)(am)5. and (2)(f)2. (2017-18).

³ The prosecutor misstated several matters at the sentencing hearing. The circuit court corrected the prosecutor's misstatement of the results of the blood analysis when pronouncing sentence. Additionally, the prosecutor corrected his own earlier misstatement of the mandatory minimum fine.

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

IT IS FURTHER ORDERED that Attorney Carlos Bailey is relieved from further representing Brandon L. Clough in this appeal. *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