



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

July 8, 2022

To:

Hon. Ralph M. Ramirez
Circuit Court Judge
Electronic Notice

Monica Paz
Clerk of Circuit Court
Waukesha County Courthouse
Electronic Notice

Christopher P. August
Electronic Notice

Winn S. Collins
Electronic Notice

Susan Lee Opper
Electronic Notice

Bruce L. Mehnert
W246 N6500 Pewaukee Rd., Apt. 200
Sussex, WI 53089

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

2019AP1436-CRNM State of Wisconsin v. Bruce L. Mehnert (L.C. #2017CF926)

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).

Bruce L. Mehnert appeals from a judgment of conviction entered upon his guilty plea to operating a motor vehicle while intoxicated as a fourth offense. 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). Mehnert received a copy of the report and filed a response. Upon consideration of the no-merit report, Mehnert's response, and an independent review of the

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

record, we conclude that the judgment may be summarily affirmed because there are no arguably meritorious issues for appeal. *See* WIS. STAT. RULE 809.21.

Mehnert was charged with operating while intoxicated (OWI) as a fourth offense and operating with a prohibited alcohol concentration (PAC) as a fourth offense. He filed a motion collaterally attacking two of his prior convictions on grounds that he did not knowingly waive his right to counsel in those criminal proceedings. Following an evidentiary hearing, the circuit court denied the motion. Pursuant to a plea agreement, Mehnert pled guilty to OWI fourth with the alcohol fine enhancer, and the PAC fourth charge was dismissed as required by WIS. STAT. § 346.63(1)(c). The State agreed to recommend “unspecified prison, stayed for 30 months of probation,” with various conditions, including 340 days of conditional jail time. At sentencing, the circuit court imposed but stayed a three-year bifurcated sentence in favor of thirty months of probation with various conditions, including 280 days of conditional jail time.² This no-merit appeal follows.

Appointed counsel’s no-merit report addresses: (1) whether Mehnert’s guilty plea was knowingly, voluntarily, and intelligently entered; (2) whether the circuit court properly exercised its discretion in imposing sentence; and (3) whether the court properly denied Mehnert’s collateral attack motion. This court is satisfied that the no-merit report correctly analyzes the issues it raises as without merit, and with one exception, this court will not discuss them further. Specifically, in further support of the circuit court’s decision to deny Mehnert’s collateral-attack

² The sentence was bifurcated into eighteen months’ initial confinement followed by eighteen months’ extended supervision. Mehnert’s sentence credit was applied to his conditional jail time. The electronic circuit court docket entries reflect that Mehnert successfully discharged from probation in April 2021.

motion, we note that on April 20, 2022, the Wisconsin Supreme Court released a decision calling into question whether Mehnert's motion and its attachments set forth a prima facie case warranting an evidentiary hearing. In *State v. Clark*, 2022 WI 21, 401 Wis. 2d 344, 972 N.W.2d 533, the supreme court held that if the transcript of the prior OWI hearing is unavailable, the burden does *not* shift to the State to prove a valid waiver of the right to counsel. Rather, where the relevant transcript from prior proceedings is unavailable, "the defendant retains the burden to demonstrate [that] the right to counsel was violated" in the prior proceedings. *Id.*, ¶2. The facts in *Clark* are nearly identical to those in the present case.³

In his response to counsel's no-merit report, Mehnert asserts that he was improperly convicted of an OWI fourth in this case because he has "1 first [OWI], 2 second [OWIs] and no thirds." Though this claim is different from those litigated pursuant to Mehnert's collateral attacks, it, too, lacks arguable merit. In pertinent part, WIS. STAT. § 346.65(2)(am)4, makes it a Class H felony if the number of convictions "in the person's lifetime ... equals 4." That Mehnert previously received the benefit of being charged with two second offenses rather than a second and a third offense does not change the number of countable convictions.

Our independent review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the judgment of conviction, and

³ Counsel's no-merit report presumes that Mehnert set forth a prima facie case and goes on to address the propriety of the circuit court's ruling in light of the evidence presented at Mehnert's evidentiary hearing. While we agree with counsel's discussion of the evidentiary hearing and the conclusion that no issue of arguable merit arises from the circuit court's decision, we do not explicitly endorse the assertion in counsel's no-merit report that "the record is plain that Mr. Mehnert's affidavit sufficiently established a prima facie case that his right to counsel was violated in both prior cases."

discharges appellate counsel of the obligation to further represent Mehnert in this 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 Christopher P. August is relieved from further representing Bruce L. Mehnert 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