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**DISTRICT III**

August 23, 2022

To:

Hon. J. Michael Bitney  
Circuit Court Judge  
Electronic Notice

Sharon Millermon  
Clerk of Circuit Court  
Barron County Justice Center  
Electronic Notice

Winn S. Collins  
Electronic Notice

Dennis Schertz  
Electronic Notice

Brian H. Wright  
Electronic Notice

Jessica L. Zaspel  
850 Bonnet Street  
Cumberland, WI 54829

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

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2020AP392-CRNM      State of Wisconsin v. Jessica L. Zaspel (L. C. No. 2018CT77)

Before Gill, J.<sup>1</sup>

**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).**

Jessica Zaspel appeals from an amended judgment convicting her of a second offense of operating a motor vehicle while under the influence of an intoxicant (OWI-second) and operating a motor vehicle with a revoked license (OAR).<sup>2</sup> Attorney Dennis Schertz has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32. The no-merit

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2019-20). All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

<sup>2</sup> An additional charge of a second offense of operating a motor vehicle with a prohibited alcohol concentration was dismissed.

report sets forth the procedural history of the case and addresses the sufficiency of the evidence, the sentences, and trial counsel's performance. Zaspel was advised of her right to respond to the no-merit report, but she has not filed a response. Having independently reviewed the entire record as mandated by *Anders v. California*, 386 U.S. 738, 744 (1967), we conclude there are no arguably meritorious issues for appeal.

The charges arose from the investigation of a single-vehicle accident. At trial, Barron County Sheriff's Deputy Erik Sedani testified that he responded to a dispatch call for a disabled vehicle. Upon arriving at the scene, Sedani observed Zaspel sitting on the ground near the back wheel of an extensively damaged Saturn sport utility vehicle that appeared to have been involved in a rollover accident. Zaspel seemed distraught, and she was crying and slurring her words as she spoke to her daughter, Nevada LeBow, who had arrived at the scene after the accident. Sedani noticed a strong odor of intoxicants coming from Zaspel.

In response to questions from Sedani, Zaspel stated that she had consumed three beers and one mixed drink before being involved in a rollover automobile accident on the way home from a music festival. Sedani administered three field sobriety tests. Zaspel was unable to complete two of the tests. The other test produced indicia of Zaspel's impairment. Sedani then arrested Zaspel and transported her to an emergency room for a blood draw. A chemist from the Wisconsin State Laboratory of Hygiene subsequently testified at Zaspel's jury trial that Zaspel's blood sample contained an ethanol concentration of 0.196 grams per 100 milliliters.

After the blood draw, Zaspel admitted to Sedani that she had been driving, although she did not specify when or where. At trial, the State introduced Sedani's body camera video of his interactions with Zaspel near the Saturn and at the medical center.

LeBow testified at trial that she was at a friend's house when Zaspel called her and told her that she had been in an automobile accident. About an hour later, Zaspel showed up at LeBow's friend's house, where Zaspel consumed a shot of Fireball whiskey. LeBow then walked with Zaspel for about two minutes to where the Saturn was sitting in the road. Zaspel did not respond to LeBow's repeated questions as to what had happened and whether Zaspel had been driving or if anyone else was with her.

Paul Gilpin testified for the defense that he was at the music festival with Zaspel, after which the two of them stopped at the Turtle Lake Casino. Gilpin testified that he was driving the Saturn toward Cumberland when he swerved to avoid hitting a deer and rolled the vehicle over. The Saturn landed back on its wheels and was still operable, so Gilpin continued driving it until a check-engine light turned on. Gilpin then exited the vehicle and discovered there was coolant leaking onto the ground. At that point, he and Zaspel parted ways.

Zaspel took the stand herself and testified that she had been at the music festival and the Turtle Lake Casino with Gilpin. She testified that Gilpin was driving when the car rolled over on their way to Cumberland. When Gilpin stopped the car, Zaspel walked over to LeBow's friend's house, where she said she had a Fireball shot and then drank additional whiskey from the bottle before returning to the Saturn.

Zaspel stipulated that the circuit court could inform the jury that Zaspel's driving license was revoked on the evening in question and that she knew it was revoked. The jury found Zaspel guilty of both OWI-second and OAR.

The circuit court held a sentencing hearing. After hearing from the parties, the court discussed the gravity of the offenses, the character of the offender, and the need to protect the

public. The court then sentenced Zaspel to consecutive terms of forty days in jail on the OWI-second and ten days in jail on the OAR, fined her \$1,555, revoked her driving privileges for sixteen months, ordered an ignition interlock device for sixteen months, and imposed other statutory court costs.

We agree with counsel's description, analysis, and conclusion that any challenges to the sufficiency of the evidence, the sentences, or counsel's performance would lack arguable merit. Our independent review of the record discloses no other potential issues for appeal. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders*. Accordingly, counsel shall be allowed to withdraw, and the judgment of conviction will be summarily affirmed. *See* WIS. STAT. RULE 809.21.

Upon the foregoing,

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

IT IS FURTHER ORDERED that Attorney Dennis Schertz is relieved of any further representation of Jessica Zaspel in this matter pursuant to 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*