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DISTRICT III

November 8, 2022

To:

Hon. Robert R. Russell
Circuit Court Judge
Electronic Notice

Andrew Hinkel
Electronic Notice

Marie Peterson
Clerk of Circuit Court
Lincoln County Courthouse
Electronic Notice

Robert A. Zdroik 307324
Chippewa Valley Correctional Treatment
Facility
2909 E. Park Ave.
Chippewa Falls, WI 54729

Galen Bayne-Allison
Electronic Notice

Winn S. Collins
Electronic Notice

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

2020AP709-CRNM State of Wisconsin v. Robert A. Zdroik
(L. C. No. 2019CF35)

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 Robert Zdroik has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20),¹ concluding that no grounds exist to challenge Zdroik's conviction for operating a motor vehicle while intoxicated (OWI), as a seventh, eighth, or ninth offense and as a repeater. Zdroik was informed of his right to file a response to the no-merit report, but he has

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

not responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude that 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.

The State filed a criminal complaint charging Zdroik with four counts, each as a repeater: (1) OWI, as a seventh, eighth, or ninth offense; (2) operating a motor vehicle while revoked; (3) resisting an officer; and (4) disorderly conduct. The complaint alleged that on March 9, 2019, an officer responded to a report of a possibly intoxicated driver crashing his car into a snowbank. When the officer arrived at the scene, he observed a minivan stuck in a snowbank with its rear wheels elevated so that they did not touch the ground. The officer followed a single set of footprints from the vehicle to the door of a nearby home, where the officer could see Zdroik through a window. A resident of the home told the officer that they did not want Zdroik inside the home and asked for the officer's assistance in removing him.

The officer entered the home and made contact with Zdroik, noticing that his eyes were red and bloodshot and that there was a strong odor of intoxicants coming from his person. Zdroik's speech was slurred and at times incoherent. Zdroik refused the officer's verbal directive to leave the residence, and he physically resisted and yelled profanities when officers forcibly removed him from the residence. Officers searched Zdroik's vehicle and found an open container of vodka and multiple empty miniature alcohol bottles. Zdroik was transported to a hospital, where his blood was drawn pursuant to a warrant. He continued to yell profanities and physically resist officers while at the hospital.

The complaint further alleged that Zdroik had three felony convictions, which remained of record and unreversed, during the five-year period immediately preceding the commission of the crimes charged in this case. *See* WIS. STAT. § 939.62(2). The complaint also set forth the dates and case numbers of Zdroik's prior OWI convictions.

Zdroik ultimately entered a no-contest plea to the OWI charge, as a repeater, pursuant to a plea agreement. In exchange for Zdroik's plea, the State agreed to recommend that the remaining charges be dismissed and read in for purposes of sentencing. The State also agreed to recommend a sentence consisting of three years' initial confinement—the minimum period allowed by statute, *see* WIS. STAT. § 346.65(2)(am)6.—followed by four years' extended supervision, concurrent to a reconfinement sentence in another case. The defense was free to argue for a period of three years' extended supervision.

The circuit court conducted a plea colloquy, supplemented by a signed plea questionnaire and waiver of rights form. Following the colloquy, the court accepted Zdroik's no-contest plea, finding that it was freely, voluntarily, and intelligently made. Zdroik's attorney agreed—based on the criminal complaint, police reports, and his conversations with Zdroik—that there was an adequate factual basis for Zdroik's plea. The court then found that an adequate factual basis for the plea existed.

With the parties' agreement, the circuit court proceeded directly to sentencing. Consistent with the plea agreement, the State recommended a prison sentence consisting of three years' initial confinement followed by four years' extended supervision. The defense recommended three years' initial confinement followed by three years' extended supervision. Zdroik exercised his right of allocution. During its sentencing remarks, the court addressed

Zdroik's health concerns, his acceptance of responsibility for his actions, the need to protect the public, Zdroik's need for rehabilitation, the gravity of the offense, and the punitive component of Zdroik's sentence. The court then followed the State's recommendation and sentenced Zdroik to three years' initial confinement followed by four years' extended supervision.

The no-merit report addresses: (1) whether there would be any arguable merit to a claim for plea withdrawal; and (2) whether there are any arguable grounds to challenge Zdroik's sentence. We agree with counsel's description, analysis, and conclusion that these potential issues lack arguable merit, and we therefore do not address them further. The entry of a valid no-contest plea waives all nonjurisdictional defects and defenses, including alleged constitutional violations that occurred before the plea was entered. *See State v. Lasky*, 2002 WI App 126, ¶11, 254 Wis. 2d 789, 646 N.W.2d 53.

Our independent review of the record discloses no other potential issues for appeal.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Andrew Hinkel is relieved of his obligation to further represent Robert Zdroik 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