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DISTRICT III

December 29, 2022

To:

Hon. R. Michael Waterman
Circuit Court Judge
Electronic Notice

Kristi Severson
Clerk of Circuit Court
St Croix County Courthouse
Electronic Notice

Karl E. Anderson
Electronic Notice

Winn S. Collins
Electronic Notice

Richard L. Yonko
Electronic Notice

Jennifer Lyne Marx
1380 Heritage Drive, Apt.7
New Richmond, WI 54017

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

2020AP1561-CRNM State of Wisconsin v. Jennifer Lyne Marx
(L. C. No. 2018CT2)

Before Hruz, J.¹

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).

Jennifer Marx appeals from a judgment convicting her of a third offense of operating a motor vehicle under the influence of an intoxicant combined with one or more controlled substances (OWI-3rd). Attorney Richard Yonko has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32; *Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit report sets forth the procedural history of the case and addresses the

¹ 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.

sufficiency of the evidence to support the verdict, Marx's trial counsel's performance, objections raised at trial, the circuit court's acceptance of a report by stipulation, and the sentence. Marx was advised of her right to respond to the report, but she has not filed a response. Having independently reviewed the entire record, as well as the no-merit report, we conclude that counsel will be allowed to withdraw and the judgment of conviction shall be summarily affirmed. *See* WIS. STAT. RULE 809.21.

The State charged Marx with OWI-3rd following a traffic accident. At trial, Wisconsin State Patrol Trooper Keith Wright testified that he was dispatched to the scene of a single-vehicle rollover. Upon arriving, Wright observed Marx being helped from the driver's side of the damaged vehicle, he detected an odor of intoxicants coming from Marx, and he noticed bottles of intoxicants and prescription medication bottles in and around the car. Wright did not perform field sobriety tests on Marx because she was going in and out of consciousness and he was uncertain as to the extent of her injuries. However, Marx told Wright that she had a few drinks four hours prior to the accident and she agreed to a blood draw. An analysis of Marx's blood sample showed an alcohol concentration of 0.044, as well as the presence of amphetamine, Alprazolam and Clonazepam.

The parties stipulated that Lorraine Edwards, a chemist at the Wisconsin State Laboratory of Hygiene, could testify about the general effects of the substances found in Marx's blood, without offering an opinion as to Marx's level of impairment. Edwards testified that combining alcohol with amphetamine, Alprazolam and Clonazepam increases the risk of impairment—including by inhibiting the ability of the eyes to track and focus and by slowing reaction times. Edwards also noted that the levels of Alprazolam and Clonazepam in Marx's blood were outside the usual therapeutic range.

Marx took the stand following a colloquy regarding her right to remain silent. She testified that she kept falling asleep moments before the crash, but she attributed her inability to stay awake to a previously diagnosed condition of narcolepsy, for which she had been taking medication. Marx also testified that her physician had recently adjusted her anxiety and antidepressant medications because she was recently raped and her father had passed away.

The jury found Marx guilty. The circuit court sentenced Marx to eighty days in jail with good time, imposed fines and surcharges totaling \$1,744, and ordered twenty-four months of revocation of operating privileges and use of an ignition interlock device.

We agree with counsel's analysis and conclusion that any challenge to the sufficiency of the evidence to support the verdict, the circuit court's evidentiary rulings, trial counsel's performance, or the sentence 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* and WIS. STAT. RULE 809.32.

Accordingly,

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

IT IS FURTHER ORDERED that Attorney Richard Yonko is relieved of any further representation of Jennifer Marx in this matter pursuant to 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