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DISTRICT II

February 1, 2023

To:

Hon. Maria S. Lazar
Circuit Court Judge
Electronic Notice

Monica Paz
Clerk of Circuit Court
Waukesha County Courthouse
Electronic Notice

Winn S. Collins
Electronic Notice

Susan Lee Opper
Electronic Notice

Christopher D. Sobic
Electronic Notice

Justin M. Smith
3250 Silver Circle Dr.
Oconomowoc, WI 53066

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

2020AP230-CRNM State of Wisconsin v. Justin M. Smith (L.C. #2018CF453)

Before Gundrum, P.J., Neubauer and Grogan, 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).

Justin M. Smith appeals from a judgment of conviction for fifth- or sixth-offense operating a motor vehicle while intoxicated (OWI) contrary to WIS. STAT. § 346.63(1)(a) (2017-18)¹ and two counts of misdemeanor bail jumping contrary to WIS. STAT. § 946.49(1)(a) (2017-18). Smith's appointed appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Smith was advised of his

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

right to file a response but has not done so. Upon consideration of the no-merit report and an independent review of the Record as mandated by *Anders* and RULE 809.32, we conclude there is no arguable merit to any issue that could be raised on appeal. We therefore summarily affirm the judgment. *See* WIS. STAT. RULE 809.21(1).

Smith was charged in a six-count complaint with the crimes of conviction and others following his single-vehicle crash. Smith was confrontational with authorities and medical personnel and admitted to drinking a liter of vodka. He refused a blood test, and police obtained a search warrant. Smith was found to have a blood alcohol concentration of .273.

Smith filed a motion seeking to suppress the blood-test results by challenging the validity of the search warrant. Smith did not contest that the warrant affidavit established probable cause for the search. Instead, he argued that the issuing magistrate, the Hon. Maria S. Lazar, could not be neutral and detached because Smith had appeared before her in two other cases that were then pending. Additionally, Smith found it significant that Judge Lazar was only contacted to issue the warrant after the on-duty judge was unavailable. The court denied the motion, concluding it was not subjectively biased and that Smith had failed to demonstrate the circumstances established objective bias.

Following the denial of his suppression motion, Smith entered into a plea agreement with the State. The plea agreement required him to enter a plea other than not guilty to the OWI count and the two misdemeanor bail-jumping offenses.² The remaining charges in this case and two

² Smith ultimately entered an *Alford* plea to the OWI count in anticipation of appealing the denial of his motion to suppress. *See North Carolina v. Alford*, 400 U.S. 25 (1970). He entered no-contest pleas to the bail-jumping charges.

other cases would be dismissed and read in at sentencing.³ The State agreed to recommend “unspecified prison” with conditions on the OWI count and concurrent ninety-day sentences on each of the bail-jumping counts.

The circuit court accepted Smith’s plea following a thorough colloquy and proceeded immediately to sentencing. On the OWI offense, it imposed an initial confinement term of eighteen months with twenty-four months’ extended supervision. The court ordered concurrent sentences of ninety days’ jail on each of the misdemeanor bail-jumping convictions. The court imposed thirty-six-month terms of license revocation and ignition-interlock installation as well as a quadrupling of the imposed \$1,200 fine pursuant to WIS. STAT. § 346.64(2)(g)3 (2017-18).

After sentencing, the circuit court entered an amended judgment of conviction that slightly revised the amount of sentence credit based upon a letter from the Department of Corrections. Smith subsequently petitioned for sentence adjustment, which was denied based upon the State’s objection.

The no-merit report concludes Smith cannot raise nonfrivolous arguments regarding the denial of his suppression motion; the knowing, intelligent, and voluntary nature of his pleas; the adequacy of the circuit court’s plea colloquy; and the court’s exercise of its sentencing discretion. Our review of the Record satisfies us that the no-merit report thoroughly analyzes these issues and properly concludes any challenge based upon them would lack arguable merit. Our review of the Record discloses no other potentially meritorious issues for appeal.

³ Count six, which was a prohibited alcohol concentration charge, was dismissed outright by operation of law. *See* WIS. STAT. § 346.63(1)(c) (2017-18).

Therefore,

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

IT IS FURTHER ORDERED that Attorney Christopher D. Sobic is relieved of further representing Justin M. Smith 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