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**DISTRICT I**

August 15, 2023

To:

Hon. Jack L. Davila  
Circuit Court Judge  
Electronic Notice

Paul C. Dedinsky  
Electronic Notice

Anna Hodges  
Clerk of Circuit Court  
Milwaukee County Safety Building  
Electronic Notice

Lauren Jane Breckenfelder  
Electronic Notice

Dustin Robert Borrmann  
5105 W. National Avenue  
West Milwaukee, WI 53214

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

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2022AP950-CRNM      State of Wisconsin v. Dustin Robert Borrmann  
(L.C. # 2017CT1849)

Before Dugan, 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).**

Dustin Robert Borrmann appeals a judgment of conviction entered upon his guilty plea to operating a motor vehicle while under the influence of an intoxicant, as a third offense. Appellate counsel, Attorney Lauren Jane Breckenfelder, filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32. Borrmann did not file a response. Upon consideration of the no-merit report and an independent review of the record

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2021-22). All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

as mandated by *Anders*, this court concludes that no arguably meritorious issues exist for an appeal. Therefore, this court summarily affirms. *See* WIS. STAT. RULE 809.21.

According to the criminal complaint, police stopped a Toyota on April 28, 2017, after observing it moving at high speeds on West Allis city streets, veering into a lane of oncoming traffic, and then overcorrecting and nearly striking a parked car. When officers approached the Toyota, they detected a strong odor of marijuana emanating from the vehicle. The driver, subsequently identified as Borrmann, had red, glassy eyes, and his tongue had a green hue. He agreed to perform field sobriety tests and displayed poor balance along with other indicia of impairment. A phlebotomist drew a sample of Borrmann's blood within three hours of his operation of the motor vehicle. An analysis of the sample showed that his blood contained Delta-9 THC in the amount of 19 ng/mL, and methadone in the amount of 190 ng/mL. A review of the records maintained by the Wisconsin Department of Transportation revealed that Borrmann had been convicted of operating while intoxicated on two prior occasions. The State charged Borrmann with operating a motor vehicle while intoxicated and with operating a motor vehicle with a detectable amount of a restricted controlled substance in his blood, both as a third offense.

Borrmann moved to suppress the evidence against him on the grounds that police stopped and arrested him without reasonable suspicion or probable cause to believe that he had committed either a crime or a traffic violation. The circuit court conducted a hearing at which two West Allis law enforcement officers were the sole witnesses. The circuit court believed the officers' testimony and concluded that the traffic violations that the officers described warranted the stop of Borrmann's vehicle. The circuit court further concluded that the traffic violations,

coupled with the officers' observations of Borrmann's impairment following the traffic stop, warranted his arrest. The circuit court therefore denied the suppression motion.

Borrmann requested a jury trial, but the trial date was substantially delayed by his requests for new counsel and by the COVID-19 pandemic. Then, in June 2021, as Borrmann began his final six months of confinement for an unrelated felony conviction, he decided to resolve the instant case with a plea agreement. On June 19, 2021, Borrmann pled guilty to operating a motor vehicle while intoxicated as a third offense, and the circuit court dismissed the remaining charge.

The matter proceeded immediately to sentencing. Borrmann faced a mandatory minimum period of incarceration of forty-five days in jail, a maximum incarceration of one year in jail, a mandatory minimum fine of \$600, and a maximum fine of \$2,000. *See* WIS. STAT. §§ 346.63(1)(a), 346.65(2)(am)3. (2017-18). Borrmann also faced a driver's license revocation of not less than two years and not more than three years, and a driving restriction requiring an ignition interlock device for not less than one year and not more than the maximum period of his license revocation. *See* WIS. STAT. §§ 343.30(1q)(b)4., 343.301(1g)(am)1., (2m)(a) (2017-18). The circuit court imposed the minimum \$600 fine and a four-month jail sentence concurrent with the prison term that Borrmann was already serving. The circuit court also imposed a twenty-four-month license revocation and a twenty-four-month ignition interlock requirement.

The no-merit report addresses the potential issues of whether the circuit court properly denied Borrmann's suppression motion, whether Borrmann entered his guilty plea knowingly, intelligently, and voluntarily, and whether the circuit court properly exercised its sentencing discretion. This court is satisfied that appellate counsel properly analyzed these issues, and this

court agrees with appellate counsel that further pursuit of these issues would lack arguable merit.<sup>2</sup> Appellate counsel also addresses why Borrmann could not pursue an arguably meritorious due process challenge to his sentence or an arguably meritorious claim that a new factor warrants sentence modification. This court agrees with appellate counsel that the record does not support such claims and that pursuit of either claim would lack arguable merit. Additional discussion of these matters is not warranted.

This court's independent review of the record does not disclose any other potential issues for appeal. This court concludes that further postconviction or appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

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

IT IS FURTHER ORDERED that Attorney Lauren Jane Breckenfelder is relieved of any further representation of Dustin Robert Borrmann on appeal. *See* WIS. STAT. RULE 809.32(3).

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<sup>2</sup> The circuit court established during the plea colloquy that Borrmann reviewed a plea questionnaire and waiver of rights form with his trial counsel and that he understood it. The circuit court also confirmed that Borrmann had not signed the form himself but that he had authorized his trial counsel to sign the document on his behalf. Although circuit court docket entries confirm that Borrmann's trial counsel filed a copy of the form at the time of the plea hearing, the form is not in the record. Appellate counsel advises that she consulted with the clerk of circuit court and that the clerk is unable to locate the document. It was apparently discarded inadvertently due to clerical error. Neither the clerk's error, nor the omission of Borrmann's signature on the plea questionnaire provides a basis to challenge the validity of Borrmann's guilty plea. A written plea questionnaire is a tool that the circuit court may use in conducting a plea colloquy, but it is not an essential component of the plea procedure. *See State v. Hoppe*, 2009 WI 41, ¶30, 317 Wis.2d 161, 765 N.W.2d 794. In this case, the plea colloquy that the circuit court conducted on the record demonstrates that Borrmann entered his guilty plea knowingly, intelligently, and voluntarily. *See id.*, ¶31.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*