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WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

August 30, 2023

To:

Hon. Jeffrey S. Froehlich
Circuit Court Judge
Electronic Notice

LeAnne Karls
Clerk of Circuit Court
Calumet County Courthouse
Electronic Notice

Winn S. Collins
Electronic Notice

Andrew Hinkel
Electronic Notice

Stewart S. Beard, #708890
Oakhill Correctional Inst.
P.O. Box 938
Oregon, WI 53575-0938

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

2022AP1721-CRNM State of Wisconsin v. Stewart S. Beard (L.C. #2021CF84)

Before Neubauer, Grogan and Lazar, 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).

Stewart S. Beard appeals a judgment of conviction entered upon his no contest plea to eighth-offense operating while intoxicated (OWI), contrary to WIS. STAT. § 346.63(1)(a) (2021-22).¹ Beard'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). Beard was advised of his right to file a response but has not responded. Upon consideration of the no-merit report and following an independent review of the Record as mandated by *Anders* and RULE 809.32, we

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

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).

Beard was observed running a stop sign by a citizen witness, nearly causing a collision in the early evening hours of April 15, 2021. The witness followed Beard to a business, where he observed the male driver park in an employee lot and enter the building. Local officers located Beard in the business, and he was interviewed by a sheriff's deputy. Beard confirmed that he was the vehicle's registered owner and had driven to work, but he denied seeing the stop sign and claimed he could not remember driving to work. Beard also acknowledged recently drinking a beer.

Prior to arriving, law enforcement officers were aware via Department of Transportation records that Beard had seven prior alcohol-related convictions and that he was subject to a .02 alcohol restriction. The interviewing deputy noted Beard's eyes were slightly glassy and bloodshot but did not detect the odor of alcohol or other physical signs of impairment. The deputy requested that Beard perform field sobriety tests; shortly thereafter, Beard asked the deputy to give him "the blow test." A preliminary breath test returned a result of .08. Beard was arrested and refused to consent to a blood sample, at which time law enforcement obtained a warrant for a blood draw. Testing of the sample showed Beard had a blood alcohol content of .077.

Beard was charged with eighth-offense OWI and operating with a prohibited alcohol concentration (PAC). He filed a motion to suppress limited to "the extension of the stop and contact with Mr. Beard specifically when law enforcement requested that he perform field sobriety tests." The circuit court denied the motion, concluding that "given the bad driving, the

admission to drinking, the number of priors, and the bloodshot and glassy eyes, there was reasonable suspicion to investigate a violation of the .02 restriction for Mr. Beard.”

Beard then reached a plea agreement with the State under which he would plead no contest to the OWI charge, the PAC charge would be dismissed and read in, and the State would recommend a sentence consisting of three years’ initial confinement and three years’ extended supervision with the defense free to argue. After a thorough colloquy, the circuit court accepted Beard’s no contest plea, adjudged him guilty, and dismissed the PAC charge. The parties immediately proceeded to sentencing, at which time the defense joined in the State’s recommendation. The circuit court adopted the jointly recommended sentence.

The no-merit report addresses whether any nonfrivolous argument exists regarding the circuit court’s denial of the suppression motion, the adequacy of the plea colloquy, the validity of Beard’s plea, and the circuit court’s exercise of sentencing discretion. Our independent review of the appellate Record satisfies us that the no-merit report sufficiently analyzes these issues and properly concludes that any challenge based upon them would lack arguable merit. Additionally, we perceive no other nonfrivolous issues for appeal based on this Record.

Based upon the foregoing,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21(1).

IT IS FURTHER ORDERED that Attorney Andrew Hinkel is relieved of further responsibility for representing Stewart S. Beard in connection with this matter. *See* WIS. STAT. RULE 809.32(3).

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

Samuel A. Christensen
Clerk of Court of Appeals