



OFFICE OF THE CLERK
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

March 13, 2024

To:

Hon. Douglas R. Edelstein
Circuit Court Judge
Electronic Notice

Michelle Weber
Clerk of Circuit Court
Fond du Lac County Courthouse
Electronic Notice

Carlos Bailey
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

Julie A. Carter, #566112
Robert Ellsworth Corr. Center
21425-A Spring St.
Union Grove, WI 53182-9408

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

2022AP1547-CRNM State of Wisconsin v. Julie A. Carter (L.C. # 2021CF271)

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).

Julie A. Carter appeals a judgment of conviction for operating a motor vehicle while intoxicated (OWI) as a sixth offense, disorderly conduct, and misdemeanor bail jumping. Appointed appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22)¹ and *Anders v. California*, 386 U.S. 738 (1967). Carter was advised of her right to file a response but has not done so. Upon consideration of the report and an independent review

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

of the Record as mandated by *Anders* and RULE 809.32, we summarily affirm the judgment because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

Carter was convicted on the OWI charge and on a charge for operating a motor vehicle with a prohibited alcohol concentration (PAC) after a jury trial. The circuit court dismissed the PAC charge pursuant to WIS. STAT. § 346.63(1)(c).² Prior to the trial, Carter had pled no-contest to the charges for disorderly conduct and misdemeanor bail jumping.

On the OWI charge, the circuit court sentenced Carter to the minimum mandatory fine of \$600, *see* WIS. STAT. § 346.65(2)(am)5., the presumptive minimum term of initial confinement of eighteen months, *see id.*, and four years of extended supervision. On the disorderly conduct and bail-jumping charges, the court sentenced Carter to thirty days' incarceration on each charge, concurrent with the OWI sentence.

The no-merit report first addresses whether the evidence at trial was sufficient to support the jury's guilty verdicts on the OWI and PAC charges. We agree with counsel that there is no arguable merit to this issue. An appellate court will not overturn a conviction "unless the evidence, viewed most favorably to the state and the conviction, is so insufficient in probative value and force that it can be said as a matter of law that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt." *See State v. Poellinger*, 153 Wis. 2d 493, 501, 451

² "Section 346.63(1)(c) of the Wisconsin Statutes provides that although a defendant may be charged and prosecuted for both OWI and PAC, violations of §§ 346.63(1)(a) and (b), respectively, a defendant may not be 'convicted' and sentenced for both OWI and PAC if the charges arise out of the same incident or occurrence." *State v. Jorgensen*, 2003 WI 105, ¶6, 264 Wis. 2d 157, 667 N.W.2d 318.

N.W.2d 752 (1990). Without reciting all of the evidence here, we are satisfied that it was sufficient.

Based on our independent review of the Record, we also agree with counsel that there are no other issues of arguable merit relating to the trial. We see no non-frivolous issues relating to Carter's speedy trial demand, the circuit court's pretrial rulings, jury selection, opening statements, evidentiary objections, Carter's decision not to testify, the jury instructions, and closing arguments.³

The no-merit report next addresses whether Carter's no-contest pleas to disorderly conduct and bail jumping could be challenged as not knowing, intelligent, and voluntary. We agree with counsel that there is no arguable merit to this issue. The circuit court conducted a plea colloquy with Carter that fully complied with WIS. STAT. § 971.08 and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. We see no other non-frivolous basis on which Carter might seek to withdraw her no-contest pleas.

The no-merit report also addresses whether the circuit court erroneously exercised its sentencing discretion. We agree with counsel that there is no arguable merit to this issue. The court considered the required sentencing factors along with other relevant factors. See *State v. Gallion*, 2004 WI 42, ¶¶37-49, 270 Wis. 2d 535, 678 N.W.2d 197. The court did not consider any improper factors. Carter's sentences were within the allowed maximum and could not be

³ To avoid any future confusion, we note that the no-merit report misquotes the instruction the jury received on the definition of "under the influence." Specifically, the quotation in the report omits a part of the instruction. This omission appears inadvertent; the report does not suggest that there is any potential issue relating to the instruction. Regardless, the Record shows that the jury received the complete, correct instruction.

challenged as unduly harsh or so excessive as to shock public sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We see no other non-frivolous basis on which Carter might challenge her sentences.

Based upon our independent review of the Record, we have found no other arguable basis to pursue further appellate proceedings. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Carlos Bailey is relieved from further representing Julie A. Carter in this appeal. *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