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**DISTRICT IV**

December 5, 2024

To:

Hon. Lyndsey A. B. Brunette  
Circuit Court Judge  
Electronic Notice

Heather Bravener  
Clerk of Circuit Court  
Clark County Courthouse  
Electronic Notice

Dennis Schertz  
Electronic Notice

Jennifer L. Vandermeuse  
Electronic Notice

Steven A. Warminski  
N12608 Fernwall Avenue  
Stanley, WI 54768

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

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2023AP411-CRNM      State of Wisconsin v. Steven A. Warminski (L.C. # 2017CF125)

Before Blanchard, Graham, and Taylor, 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).**

Attorney Dennis Schertz, appointed counsel for Steven Warminski, has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2021-22) and *Anders v. California*, 386 U.S. 738, 744 (1967).<sup>1</sup> The no-merit report addresses whether there would be arguable merit to a challenge to the sufficiency of the evidence to support the jury verdicts; the sentence imposed by the circuit court; or the effectiveness of trial counsel's representation. Warminski was provided a copy of the report, but has not filed a response. Upon

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2021-22 version.

our review of the no-merit report and our independent review of the record, we agree with counsel’s assessment that there are no arguably meritorious appellate issues. Accordingly, we affirm.

Warminski was charged with operating while intoxicated (OWI) and operating with a prohibited blood alcohol concentration (PAC), both as a fourth offense, and operating after revocation (OAR), as a seventh offense. Defense counsel raised the issue of Warminski’s competency, and the circuit court found that Warminski was not competent but likely to regain competency with treatment. At a later hearing, the circuit court found that Warminski had regained competency. Following trial, the jury returned guilty verdicts on all counts. The court sentenced Warminski on the PAC and OAR counts to a total of 215 days of jail time, thirty-six months of license revocation, thirty-six months of ignition interlock device requirement, and the minimum mandatory fine of \$1200.<sup>2</sup>

The no-merit report addresses whether the evidence was sufficient to support the verdicts. A claim of insufficiency of the evidence requires a showing that “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.” *State v. Poellinger*, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). We agree with counsel’s assessment that there would be no arguable merit to an argument that that standard has been met here. The evidence at trial—including testimony by the responding

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<sup>2</sup> While Warminski was found guilty of both OWI and PAC, he could only be convicted and sentenced for one of the offenses. See *State v. Bohacheff*, 114 Wis. 2d 402, 417, 338 N.W.2d 466 (1983).

officers, the medical laboratory technician who drew a sample of Warminski's blood after his arrest, and the forensic scientist who tested the alcohol content of Warminski's blood sample—was sufficient to support the verdicts.

The no-merit report also addresses whether a challenge to Warminski's sentence would have arguable merit. Our review of a sentence determination begins “with the presumption that the trial court acted reasonably, and the defendant must show some unreasonable or unjustifiable basis in the record for the sentence complained of.” *State v. Krueger*, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). The record establishes that Warminski was afforded the opportunity to address the court prior to sentencing. The court explained that it considered facts pertinent to the standard sentencing factors and objectives, including the seriousness of the offenses, Warminski's rehabilitative needs, and the need to protect the public. *See State v. Gallion*, 2004 WI 42, ¶¶39-46 & n.11, 270 Wis. 2d 535, 678 N.W.2d 197. The sentence was within the maximum Warminski faced and, given the facts of this case, there would be no arguable merit to a claim that the sentence was unduly harsh or excessive. *See State v. Stenzel*, 2004 WI App 181, ¶21, 276 Wis. 2d 224, 688 N.W.2d 20 (a sentence is unduly harsh or excessive “only where the sentence is so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances” (citation omitted)). The court awarded Warminski sentence credit in the amount of 239 days, as calculated by defense counsel. We discern no erroneous exercise of the court's sentencing discretion.

Finally, the no-merit report addresses whether there would be arguable merit to a claim of ineffective assistance of counsel. We agree with counsel's assessment that a claim of ineffective assistance of counsel would be wholly frivolous.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. We conclude that any further 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 affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Dennis Schertz is relieved of any further representation of Steven Warminski in this matter. *See* WIS. STAT. RULE 809.32(3).

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*