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 I**

May 17, 2019

*To*:

Hon. Hannah C. Dugan
Circuit Court Judge
901 N. 9th Street, Room 414
Milwaukee, WI 53233-1425

Becky Nicole Van Dam
Mayer Law Office, LLC
120 N. Main St., Ste. 360
West Bend, WI 53095

John Barrett
Clerk of Circuit Court
821 W. State Street, Room G-8
Milwaukee, WI 53233

Criminal Appeals Unit
Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

Karen A. Loebel
Deputy District Attorney
821 W. State St.
Milwaukee, WI 53233

John M. Eckert
4542 N. 37th St.
Milwaukee, WI 53209

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

---

2018AP2056-CRNM State of Wisconsin v. John M. Eckert (L.C. # 2010CT261)

Before Kessler, P.J.[1]

**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).**

John M. Eckert pled guilty to operating while intoxicated as a second offense. *See* WIS. STAT. § 346.63(1)(a). He faced maximum penalties of an $1100 fine, six months in jail, an eighteen-month revocation of his driver's license, and an alcohol and drug abuse assessment.

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2017-18). All subsequent references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

*See* WIS. STAT. §§ 346.65(2)(am)2., 343.30(1q)(b)3., (1q)(c). The circuit court imposed the mandatory minimum $350 fine, the mandatory minimum twelve-month license revocation, and the alcohol and drug assessment. *See* §§ 346.65(2)(am)2., 343.30(1q)(b)3., (1q)(c). The circuit court also imposed a fifty-day jail sentence with forty-nine days of presentence credit and ordered Eckert to serve the sentence currently with the sentence he was already serving. He appeals.

Eckert's appellate counsel, Attorney Becky Nicole Van Dam, filed a no-merit report and a supplemental no-merit report pursuant to ***Anders v. California***, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2017-18). Eckert did not file a response. We have considered the no-merit reports and conducted an independent review of the record. We conclude that no arguably meritorious issues exist for an appeal. We summarily affirm. *See* WIS. STAT. RULE 809.21 (2017-18).

On July 27, 2008, an officer on patrol heard a passenger in a car calling for help. The officer stopped the car and observed that the driver, subsequently identified as Eckert, appeared to be intoxicated. For reasons that the record does not make clear but that were apparently the fault of personnel in the Milwaukee County District Attorney's office, the State did not initiate a prosecution until March 9, 2010. On that date, the State filed a summons and complaint charging Eckert with one count of operating while intoxicated as a third offense. Eckert failed to respond to the summons, and a warrant was issued for his arrest.

In September 2017, Eckert was arrested on new charges and, on September 23, 2017, he made his initial appearance in the instant matter. Eckert quickly decided to resolve this case with

a plea bargain.[2] On November 7, 2017, he pled guilty to an amended charge of operating while intoxicated as a second offense. The matter proceeded immediately to sentencing, and the circuit court imposed the sentence that Eckert requested.

In the no-merit report, appellate counsel first examines whether the State timely commenced the prosecution. The State brought the charge by filing a summons within the applicable three-year statute of limitations. *See* WIS. STAT. § 939.74. We agree with appellate counsel that the prosecution was timely, and further pursuit of this issue would therefore lack arguable merit.

Appellate counsel next considers whether Eckert could pursue an arguably meritorious challenge to the validity of his guilty plea. We agree with appellate counsel's conclusion that he could not mount such a challenge.

The circuit court conducted a thorough plea colloquy that fully complied with the circuit court's duties when accepting a plea other than not guilty. *See* WIS. STAT. § 971.08 (2017-18), ***State v. Bangert***, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986), and ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. We observe that among those duties is the obligation to ensure that a defendant understands the range of punishments he or she faces upon conviction. *See* ***Brown***, 293 Wis. 2d 594, ¶35. In this case, at the outset of the plea proceedings, the State advised the circuit court that the amended complaint correctly stated the penalties for operating while intoxicated as a second offense as they existed "in 2010." In fact, the amended

[2] The record suggests that Eckert separately resolved the 2017 charges. Those matters are not before us.

complaint properly described the penalties for the offense as they existed in July 2008, and the circuit court correctly reviewed those penalties with Eckert on the record during the plea colloquy. We are satisfied that the record—including the plea questionnaire and waiver of rights form and addendum; the attached written description of the elements of the crime to which Eckert pled guilty; and the plea hearing transcript—demonstrates that Eckert entered his guilty plea knowingly, intelligently, and voluntarily. Further discussion of this issue is not warranted.

We are also satisfied that the circuit court properly exercised its sentencing discretion. *See* ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. The circuit court imposed sentence based on the nature of the offense, Eckert's military service and work history, and Eckert's limited criminal record. *See* ***State v. Odom***, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695 (court must consider primary sentencing factors of the gravity of the offense, the offender's character, and the public's need for protection, and may also consider a variety of other factors concerning the offender, the crime, and the community). Moreover, the circuit court did not impose more than the mandatory minimum fine and license revocation, and the circuit court imposed the jail sentence that Eckert requested. Accordingly, we are satisfied that a challenge to the sentence would lack arguable merit. *Cf.* ***State v. Scherreiks***, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989) (defendant may not challenge on appeal a sentence that he or she affirmatively approved).

The original no-merit report did not include a discussion of a letter that the Department of Transportation filed in this case shortly after sentencing. The letter advised that, notwithstanding the one-year driver's license revocation imposed by the circuit court, the DOT had imposed a two-year revocation based on Eckert's past convictions for operating while intoxicated. At our request, appellate counsel filed a supplemental no-merit report. The supplement included an

appendix with information and materials outside the record. *See* WIS. STAT. RULE 809.32(1)(f) (2017-18). The supplemental submission shows that, pursuant to WIS. STAT. § 343.30(1q)(h) (2017-18), the DOT credited Eckert with the period of time that his license was suspended for his refusal to submit to blood or breath testing following the traffic stop in this case. The supplement further reflects that, as a result of the credit, the DOT deemed Eckert eligible to reinstate his license immediately following his sentencing in this matter. Finally, the supplement shows that Eckert is presently eligible to reinstate his license, rendering moot any challenge to the period of revocation. *Cf.* ***State v. Walker***, 2008 WI 34, ¶13-¶14, 308 Wis. 2d 666, 747 N.W.2d 673 (sentencing challenge moot after sentence is served). Accordingly, we are satisfied that further proceedings in regard to the DOT's letter would lack arguable merit.

Our independent review of the record does not disclose any other potential issues warranting discussion. We conclude that further postconviction or appellate proceedings would be wholly frivolous within the meaning of ***Anders*** and WIS. STAT. RULE 809.32 (2017-18).

IT IS ORDERED that the judgment of conviction is summarily affirmed. *See* WIS. STAT. RULE 809.21 (2017-18).

IT IS FURTHER ORDERED that Attorney Becky Nicole Van Dam is relieved of any further representation of John M. Eckert on appeal. *See* WIS. STAT. RULE 809.32(3) (2017-18).

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

---

*Sheila T. Reiff*
*Clerk of Court of Appeals*