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DISTRICT III

March 24, 2026

To:

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Circuit Court Judge
Electronic Notice

Katie Schalley
Clerk of Circuit Court
Dunn County Judicial Center
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John Blimling
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Dennis Schertz
Electronic Notice

Ricki T. Peterson
Winnebago Correctional Center
4300 Sherman Road
Winnebago, WI 54985-0128

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

2024AP1319-CRNM State of Wisconsin v. Ricki T. Peterson (L. C. No. 2021CF88)

Before Stark, P.J., Hruz, and Gill, 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).

Ricki Peterson appeals from a judgment convicting him, following a jury trial, of a fifth offense of operating a motor vehicle while intoxicated (OWI).[1] Attorney Dennis Schertz has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32; ***Anders v. California***, 386 U.S. 738, 744 (1967); ***State ex rel. McCoy v. Wisconsin Ct. of***

[1] A companion conviction for operating a motor vehicle with a prohibited blood alcohol concentration is not before us on this appeal because it was merged with the OWI count for purposes of sentencing pursuant to WIS. STAT. § 346.63(1)(c) (2023-24). All references to the Wisconsin Statutes are to the 2023-24 version.

Appeals, 137 Wis. 2d 90, 403 N.W.2d 449 (1987), *aff'd*, 486 U.S. 429 (1988). The no-merit report addresses the sufficiency of the evidence to support the verdict, trial counsel's performance, and whether the sentence imposed was excessive.

Peterson was sent a copy of the report, and he has filed a response claiming: (1) there was insufficient evidence to show that he was actually driving the truck he was accused of driving while intoxicated; (2) his trial counsel provided constitutionally ineffective assistance by failing to admonish Peterson not to have lunch with a sequestered potential witness who thereafter could not be called; (3) the jury should have been informed that Peterson's four prior convictions were misdemeanors; (4) Peterson was denied his Confrontation rights because the deputy who detained him did not testify at his preliminary hearing; and (5) postconviction counsel should have filed a sentence modification motion on his behalf. Upon reviewing the entire record, as well as the no-merit report, Peterson's response, and a supplemental no-merit report filed by counsel to address some of the issues raised by Peterson, we conclude that there are no arguably meritorious appellate issues. Therefore, counsel shall be allowed to withdraw, and the judgment of conviction will be summarily affirmed. *See* WIS. STAT. RULE 809.21.

Preliminary Hearing

Peterson complains that the law enforcement officer who initially detained him did not testify at his preliminary hearing, denying him the right to cross-examine the officer. However, the Confrontation Clause does not apply to preliminary hearings, which are subject to relaxed evidentiary rules allowing for the admission of hearsay. *See* WIS. STAT. § 970.038; ***State v. O'Brien***, 2014 WI 54, ¶43, 354 Wis. 2d 753, 850 N.W.2d 8. In any event, a valid conviction cures any defects relating to bindover unless they were preserved by an interlocutory appeal. *See*

State v. Webb, 160 Wis. 2d 622, 628, 467 N.W.2d 108 (1991); ***State v. Wolverton***, 193 Wis. 2d 234, 254, 533 N.W.2d 167 (1995).

Motions in Limine

The circuit court granted a set of routine motions in limine filed by the State, largely without objection. Peterson did object to allowing the State to introduce toxicology results regarding his blood without testimony from an unavailable technician who had drawn his blood. The court allowed the technician's supervisor to provide surrogate testimony about the technician's qualifications and the proper procedures for a blood draw, citing ***State v. Griep***, 2015 WI 40, 361 Wis. 2d 657, 863 N.W.2d 567 (approving use of surrogate expert testimony of a lab analyst who reviewed the forensic test results of another analyst and formed and testified to an independent opinion did not violate the defendant's Confrontation rights).

Peterson argued that ***Griep*** was inapplicable because the missing technician here was also a fact witness, who was the only person who could testify as to whether the correct procedures for a blood draw were in fact followed in this case. However, the State proposed to present the testimony of a law enforcement officer who was present during the blood draw to establish that the correct procedures were followed. Peterson did not provide any authority requiring that expert testimony about the proper procedures and factual testimony about whether those procedures were followed must be presented by the same witness.

We conclude that the circuit court properly ruled that the surrogate technician could testify about the unavailable technician's qualifications and the proper procedures for drawing blood. Whether those procedures were actually followed is a separate question that goes to the weight of the evidence introduced by the law enforcement officer, not the admissibility of the

expert's testimony. We further conclude that there is no arguably meritorious appellate issue that the court erred by admitting the blood test results based upon the foundation laid by the surrogate expert and law enforcement officer.

Speedy Trial

We next note that the matter was not tried until over two years after the complaint was filed. A defendant has both a statutory and a constitutional right to a speedy trial. *See* WIS. STAT. § 971.10(2)(a); U.S. CONST. amends. VI, XIV; WIS. CONST. art. I, § 7. Section 971.10(2)(a) provides that the trial of a defendant charged with a felony shall commence within 90 days after a speedy trial demand is made following the filing of an information. Courts employ a four-part balancing test to determine whether a person's constitutional right to a speedy trial was violated, considering: (1) the length of delay; (2) the reason for the delay; (3) whether the defendant asserted his or her right to a speedy trial; and (4) whether the delay resulted in prejudice to the defendant. ***State v. Ramirez***, 2025 WI 28, ¶30, 416 Wis. 2d 641, 22 N.W.3d 821.

Here, the trial date was delayed first at the State's request, without objection from Peterson, because an analyst was not available to testify. The trial date was reset a second time at Peterson's own request because his trial counsel became ill. The trial date was pushed back a third time at the State's request, over Peterson's objection, when a law enforcement officer became unavailable due to medical leave. Taking into account the reasons for the delays, the fact that Peterson was released on signature bond, and the fact that he never made a speedy trial demand, we see no arguable basis to raise either a statutory or constitutional speedy trial claim on appeal.

Voir Dire

Peterson did not object to any of the jurors who were ultimately empaneled, and there is nothing in the record to suggest that any of them were biased. We therefore see no arguable basis for Peterson to challenge the impartiality of the jury.

Jury Instructions

Peterson did not object to any of the tailored pattern instructions the circuit court provided to the jury, and we do not see any arguably meritorious basis to challenge them. In particular, we note that the court properly instructed the jury that, in order to obtain a conviction, the State needed to prove beyond a reasonable doubt that Peterson: (1) "operated" a motor vehicle on a highway—meaning that he physically manipulated or activated any of the controls of a motor vehicle necessary to put it into motion; (2) while "under the influence" of an intoxicant—meaning that his ability to operate the vehicle was impaired because of the consumption of an alcoholic beverage. *See* WIS JI—CRIMINAL 2663.

Sufficiency of the Evidence

We review the sufficiency of the evidence to support a criminal conviction by comparing it to the instructions actually given to the jury, so long as those instructions conform to the statutory requirements of the charged offense. ***State v. Beamon***, 2013 WI 47, ¶22, 347 Wis. 2d 559, 830 N.W.2d 681. As we have just explained, the circuit court properly instructed the jury. The test is whether "the evidence, viewed most favorably to the state and the conviction, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt." ***State v. Zimmerman***, 2003 WI App 196, ¶24, 266 Wis. 2d 1003, 669 N.W.2d 762 (citing ***State v. Poellinger***, 153 Wis. 2d 493, 507, 451 N.W.2d 752

(1990)); *see also* WIS. STAT. § 805.15(1). "We consider all of the evidence produced at trial, including evidence that the defendant challenges as being improperly admitted." ***State v. LaCount***, 2007 WI App 116, ¶22, 301 Wis. 2d 472, 732 N.W.2d 29.

For the purpose of this summary disposition order, we need not set forth every detail of the evidence produced at Peterson's trial. Consistent with our standard of review, we merely highlight the key evidence supporting the elements of the offense.[2]

At trial, Dunn County Sheriff's Patrol Sergeant Josh Christenson testified that, at about 12:30 a.m. on March 15, 2021, he observed a female walking along a roadway not far from an unattended vehicle parked "in the middle of the road." Christenson made contact with the pedestrian and identified her as Jaclyn Reidel. Based on his conversation with Reidel, Christenson then searched for Peterson and located him a few blocks away from where he had found Reidel.

Christenson made contact with Peterson. He observed that Peterson was unsteady on his feet, that there was an odor of intoxicants coming from his person, and that his eyes appeared glassy and bloodshot. In a conversation that was captured on Christenson's dashboard camera video and played for the jury, Peterson acknowledged to Christenson that it was his truck that was parked in a traffic lane. Peterson said he did not know where his car keys were because, during or following an argument, Reidel had taken Peterson's keys out of the ignition while Peterson was operating his truck.

[2] Peterson spends a considerable portion of his response discussing evidence that he views as creating reasonable doubt as to his guilt. Under our standard of review, however, we do not weigh such evidence.

Dunn County Sheriff's Deputy Samuel Miller testified that he received a call from Christenson for backup at about 12:33 a.m. on March 15, 2021. Upon arriving at Christenson's location, Miller observed Christenson speaking with an individual near a parked truck. After speaking with Christenson, Miller spoke with Peterson while Christenson continued speaking with Reidel and eventually gave her a ride to her sister's home.

In another conversation that was captured on Miller's dashboard camera video and played for the jury, Peterson told Miller that he had been driving his truck home from a bar when he got into an argument with Reidel. Miller smelled an odor of alcohol coming from Peterson and asked him if he had been drinking. Peterson acknowledged having had 2 to 3 drinks, with his most recent drink having been about 15 minutes earlier.

Miller administered several field sobriety tests to Peterson and observed multiple indicators of intoxication. Video clips of the sobriety tests from both Miller's and Christenson's dashboard cameras were also played for the jury. Following the sobriety tests, Miller formed the opinion that Peterson was impaired and placed him under arrest.

Miller then drove Peterson to the Mayo Clinic in Menomonie for a blood draw. While en route, Peterson made a comment (which was also captured on video and played for the jury) that he was not the only one who had been driving that night. At the hospital, Miller observed a technician perform a blood draw "like all of the rest" of the blood draws Miller had previously observed. Miller took custody of Peterson's blood sample and sent it to the State Laboratory of Hygiene in Madison in a sealed kit.

On cross-examination, Miller acknowledged that: (1) he had not personally observed Peterson driving the truck; (2) Peterson did not have the keys to the truck in his possession when

Miller questioned him; and (3) Peterson told Miller that Reidel had taken the keys out of the truck's ignition and thrown them in a ditch.

David VanDermeuse, the laboratory manager for the Mayo Clinic in Menomonie, testified about the standard procedure for blood draws. He further testified that the technician who had drawn Peterson's blood had been trained to follow the standard blood draw procedures and was qualified to do so. VanDermeuse acknowledged on cross-examination that he had not personally observed the blood draw in this case.

Thomas Neuser, a forensic scientist at the State Laboratory of Hygiene in Madison, tested Peterson's blood sample. After discussing the standard procedures used, Neuser testified that the concentration of alcohol in Peterson's blood was 0.165 grams per 100 milliliters. On cross-examination, Neuser also testified that a person with that level of blood alcohol concentration could have impairment of perception, memory, and comprehension.

Following a colloquy to determine that his decision was knowing and voluntary, Peterson chose to testify in his own defense. The circuit court did not erroneously exercise its discretion when it determined that the jury could be informed, for impeachment purposes, that Peterson had four prior convictions, but that it not be given any information about the nature of the convictions.

Peterson testified that he had driven himself and Reidel to a restaurant for dinner on the evening of March 14, 2021, and he had then driven himself and Reidel to a bar for after-dinner drinks. Reidel eventually left Peterson at the bar and came back to pick him up later, at around 11:45 p.m. Peterson said Reidel was driving them home from the bar when the two got into an argument about his drinking. Reidel stopped the truck, and Peterson got out and began walking back to the bar to get a ride from someone else.

Peterson acknowledged that the dashboard camera videos appeared to show him telling officers that he had been driving during his argument with Reidel, but he asserted that he had been attempting to tell the officers that he had been driving earlier in the evening, but not while driving home from the bar. Peterson further testified that the following morning, Reidel had both her own and his sets of car keys with her. He also noted that it was not possible to remove the keys from the ignition in his truck unless the vehicle was in park.

On cross-examination, the State elicited Peterson's testimony that he had had lunch with Reidel during the trial. During closing argument, the State then argued that Peterson's trial testimony that he was not the one driving his truck on the way home from the bar was not credible because: it was contradicted by the videotaped statements Peterson made to two law enforcement officers immediately after the incident; Peterson did not protest that he had not been driving throughout the field sobriety tests or when he was being read his rights at the clinic; and Peterson had an opportunity to call Reidel through the power of subpoena but did not do so.

Peterson's trial counsel argued that it would have been easier for Reidel to have stopped the car and removed the keys from the ignition if she had been driving rather than a passenger; it was reasonable for Peterson to go along with law enforcement in the moment and raise objections later; and Peterson's impaired memory and comprehension due to a high blood alcohol level explained his failure to cogently explain himself to the law enforcement officers at the scene.

We agree with appellate counsel that the jury could reasonably find, primarily based upon the two dashboard camera videos, that Peterson was driving his truck home from the bar and that he was impaired while doing so. Under these circumstances, there is no arguably meritorious

appellate issue that the evidence at Peterson's trial was insufficient to support the jury's guilty verdict.

Trial Counsel's Performance

Peterson contends that his trial counsel should have warned him not to go to lunch with Reidel during the trial. Reidel had been subpoenaed by the State and sequestered pursuant to a prior court order, but she had been released from the subpoena prior to lunch when the State opted not to call her. Peterson asserts that Reidel could have testified for the defense that she was the one who was driving the truck. However, both trial counsel and the State had already determined that they did not plan to call Reidel, and those decisions were not impacted by Peterson's having lunch with Reidel, regardless of whether Peterson had violated the sequestration order. Trial counsel's decision was based upon the fact that the dashboard camera video showed Reidel asserting that Peterson had been driving the truck until she took his keys out of the ignition. In these circumstances, there is no arguable basis upon which Peterson could demonstrate prejudice from his trial counsel's alleged failure to warn him about the sequestration order.

Sentence

Finally, we agree with counsel's assessment that a challenge to Peterson's sentence would also lack arguable merit. Our review of a sentence determination begins with a "presumption that the [circuit] court acted reasonably," and it is the defendant's burden to show "some unreasonable or unjustifiable basis in the record" in order to overturn it. ***State v. Krueger***, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). Here, the record shows that the circuit

court reviewed materials submitted by the parties and heard from counsel, three character witnesses for Peterson as well as Peterson personally.

The circuit court took note of the sentencing factors discussed by counsel without "rehash[ing]" them. It emphasized that Peterson's drinking problem needed to be addressed to protect the public and to meet his rehabilitative needs. The court then sentenced Peterson to two years of initial confinement (as requested by Peterson) followed by three years of extended supervision (which exceeded the parties' recommendations). It imposed $2,272 in statutory fines and a three-year revocation of Peterson's driver's license and ordered installation of an ignition interlock device, along with other conditions of extended supervision. It also awarded Peterson 33 days of sentence credit.

The components of the bifurcated sentence imposed were within the applicable penalty ranges, and the total confinement period constituted only half of the maximum exposure Peterson faced. *See* WIS. STAT. §§ 346.65(2)(am)5. (classifying a fifth OWI as a Class G felony with a presumptive minimum sentence of eighteen months of initial confinement); 973.01(2)(b)7 and (d)4 (providing maximum terms of five years of initial confinement and five years of extended supervision for a Class G felony).

There is a presumption that a sentence "well within the limits of the maximum sentence" is not unduly harsh, and the sentence imposed here was not "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." ***State v. Grindemann***, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507 (citations omitted). Furthermore, the court imposed a term of initial confinement in accordance with Peterson's own

recommendation. *See* ***State v. Scherreiks***, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989) (explaining that a defendant may not challenge on appeal a sentence that he or she affirmatively approved).

Peterson has not identified any factors that would warrant sentence modification.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. *See* ***State v. Allen***, 2010 WI 89, ¶¶81-82, 328 Wis. 2d 1, 786 N.W.2d 124. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of ***Anders*** and WIS. STAT. RULE 809.32.

Accordingly,

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

IT IS FURTHER ORDERED that Attorney Dennis Schertz is relieved of any further representation of Ricki T. Peterson in this matter pursuant to 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