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**DISTRICT III**

August 4, 2020

To:

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Circuit Court Judge  
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James Peder Rasmussen  
217 Warren Street  
Amery, WI 54001

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

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2019AP482-CRNM      State of Wisconsin v. James Peder Rasmussen  
(L. C. No. 2017CF423)

Before Stark, P.J., Hruz and Seidl, 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).**

Counsel for James Rasmussen has filed a no-merit report concluding there is no basis to challenge Rasmussen's conviction for operating a motor vehicle with a detectable amount of a controlled substance in his blood. Rasmussen was advised of his right to respond and has not responded. Upon our independent review of the record as mandated by *Anders v. California*,

386 U.S. 738 (1967), we conclude there is no merit to any issue that could be raised on appeal, and we summarily affirm. WIS. STAT. RULE 809.21 (2017-18).<sup>1</sup>

According to the criminal complaint, two individuals separately called 911 to report Rasmussen's erratic driving. One of the complainants followed Rasmussen for fifteen to twenty minutes until she observed a police officer pull over Rasmussen's vehicle. This witness saw Rasmussen drive over the centerline, cross the fog line, and aggressively tailgate other vehicles. At one point, she also saw Rasmussen enter the oncoming lane of traffic, almost colliding with a van travelling in the correct direction.

The other citizen witness who called 911 observed much of the same driving behavior, including swerving and aggressive tailgating. In fact, this witness was one of the individuals that Rasmussen had aggressively tailgated.

When police caught up to Rasmussen's vehicle, an officer observed the vehicle swerving back and forth very quickly and aggressively, touching the center and fog lines. The vehicle was also following only twenty feet behind the vehicle in front of it while traveling at sixty-five miles per hour.

The officer activated his squad car's emergency lights to conduct a traffic stop. Rasmussen's vehicle braked very quickly and made a sharp turn toward the shoulder of the roadway, traveling over the gravel onto the grass, and nearly striking a reflective highway marker post. The vehicle then swerved back toward the gravel shoulder and stopped.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

The officer requested Rasmussen's driver's license and Rasmussen grabbed every card in his wallet, dropping most of them on the ground. Rasmussen did not have his driver's license with him. The officer noticed Rasmussen's eyes were glossy and he had slurred speech. Rasmussen also had a hard time standing still, and he swayed as he stood. Rasmussen denied drinking or taking recreational drugs. He admitted taking five prescription medications. Although it was actually approximately 7:00 p.m., Rasmussen thought it was 1:00 p.m.

Rasmussen performed poorly on field sobriety tests, and he was subsequently arrested for OWI, fifth offense. Rasmussen consented to an evidentiary chemical test of his blood. After marijuana was detected in his blood, an amended Information added one count of operating with a restricted controlled substance in blood, fifth offense.

On the morning of trial, Rasmussen pleaded guilty to both counts in the amended Information.<sup>2</sup> The circuit court withheld sentence and imposed three years' probation with 330 days' jail as a condition. The court subsequently amended the judgment of conviction to authorize electronic home monitoring rather than jail, with the approval of the sheriff, due to Rasmussen's medical conditions.

The no-merit report addresses potential issues regarding: (1) whether Rasmussen's pleas were knowingly, intelligently, and voluntarily entered; (2) whether a proper factual basis supported the conviction; (3) whether the circuit court properly exercised its sentencing discretion; and (4) whether Rasmussen was denied the effective assistance of counsel during the proceedings. Upon our independent review of the record, we agree with counsel's description,

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<sup>2</sup> Due to the nature of the charges, the circuit court merged count one into count two.

analysis, and conclusion that any challenge to these issues would lack arguable merit, and we will not further address them. Our independent review of the record discloses no other potential issues for appeal.<sup>3</sup>

Therefore,

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

IT IS FURTHER ORDERED that attorney Mark A. Schoenfeldt is relieved of further representing James Rasmussen 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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*Sheila T. Reiff*  
*Clerk of Court of Appeals*

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<sup>3</sup> We note the COMPAS risk assessment was mentioned at sentencing, but the record shows it was not “determinative” of the sentence imposed. *See State v. Loomis*, 2016 WI 68, ¶¶98-99, 371 Wis. 2d 235, 881 N.W.2d 749. Any challenge to the sentence based on COMPAS would therefore lack arguable merit.