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March 16, 2020

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

2019AP311-CRNM	State of Wisconsin v. Patrick Jackson (L.C. # 2017CF922)
2019AP312-CRNM	State of Wisconsin v. Patrick Jackson (L.C. # 2017CT445)

Before Brash, P.J., Dugan and White, 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).

In these consolidated appeals, Patrick Jackson appeals judgments of conviction for one count of operating while intoxicated (third offense), and one count of operating while intoxicated (fourth offense). *See* WIS. STAT. § 346.63(1)(a) (2015-16; 2017-18).¹ Jackson's

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

appellate counsel, Michelle L. Velasquez, has filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967) and WIS. STAT. RULE 809.32. Jackson was served with a copy of the no-merit report and advised of his right to file a response. He has not filed a response. We have independently reviewed the records and the no-merit report as mandated by *Anders*. We conclude that there is no issue of arguable merit that could be pursued on appeal. Therefore, we summarily affirm the judgments.

After police officers conducted a traffic stop in December 2016, Jackson was charged with operating while intoxicated (third offense), operating with a prohibited alcohol concentration (third offense), and operating while revoked. Less than two months later, Jackson was again driving when he hit another vehicle and a freeway pillar. He was charged with operating while intoxicated (fourth offense) and operating while revoked. Jackson did not file any pretrial motions challenging the traffic stops or the collection of his blood.

Jackson ultimately entered into a plea agreement with the State that resolved the charges on those two cases, as well as two other cases.² Pursuant to the plea agreement, Jackson agreed to plead guilty to operating while intoxicated (third offense) and operating while intoxicated (fourth offense), and the charges of operating while revoked and operating with a prohibited alcohol concentration (third offense) were dismissed. The State agreed to recommend unspecified time in the House of Corrections for the third offense, unspecified time in prison for the fourth offense, and the minimum fines for both crimes.

² The other cases, which are not part of these consolidated appeals, were Milwaukee County Circuit Court Case Nos. 2017TR4229 (refusal to take test for intoxication after arrest), which was reported to the Department of Motor Vehicles as an unlawful refusal, pursuant to the plea agreement, and 2015CT2294 (operating while revoked), which was dismissed, pursuant to the plea agreement.

In preparation for his plea hearing, Jackson completed plea questionnaires and addendums identifying the rights he was waiving, such as the right to challenge the constitutionality of each traffic stop and the seizure of evidence.³ Trial counsel also provided copies of the jury instructions that he reviewed with Jackson.

The trial court conducted a thorough plea colloquy with Jackson and accepted his guilty pleas. As part of that colloquy, the trial court told Jackson that he faced minimum fines of \$1200 and \$2400 due to his elevated blood alcohol concentration in both offenses.⁴ It also dismissed the other charges, consistent with the plea agreement.

The parties proceeded immediately to sentencing, where Jackson faced up to one year of imprisonment for the third offense, plus up to three years of initial confinement and three years of extended supervision for the fourth offense. Consistent with the plea agreement, the State did not specify the length of time it believed Jackson should be imprisoned. Trial counsel urged the trial court to impose and stay a sentence of two years of initial confinement and two years of extended supervision, and to place Jackson on probation for three years with six months of “upfront time.”

³ The plea questionnaire that Jackson completed for the third offense of operating while intoxicated erroneously stated that the maximum penalty was up to six years of imprisonment, which is the penalty for a fourth offense of operating while intoxicated. However, during the plea colloquy, the parties and the trial court accurately referred to the third offense as a misdemeanor and the trial court correctly told Jackson that he was facing a minimum of forty-five days and a maximum of one year in jail for that third offense. Jackson indicated that he understood. Because the trial court properly stated the minimum and maximum terms of imprisonment—as did the criminal complaint—we conclude that this misstatement on the plea questionnaire does not present an issue of arguable merit.

⁴ Specifically, the minimum and maximum fines for Jackson’s third offense were doubled due to his .17 blood alcohol concentration, and the minimum and maximum fines for his fourth offense were quadrupled due to his .275 blood alcohol concentration. *See* WIS. STAT. § 346.65(2)(g).

For the charge of operating while intoxicated as a third offense, the trial court imposed a time-served sentence of seventy-five days and the minimum fine of \$1200. For the felony charge of operating while intoxicated as a fourth offense, the trial court sentenced Jackson to two years of initial confinement and two years of extended supervision, consecutive to the other sentence, and it imposed the minimum fine of \$2400. The trial court also declared Jackson eligible for the challenge incarceration program and the substance abuse program. Finally, the trial court ordered Jackson to pay \$1355 in restitution to the owner of the vehicle he struck.⁵

The no-merit report addresses two issues: (1) whether Jackson could seek plea withdrawal on grounds that “his pleas were not knowingly, intelligently, and voluntarily entered, or because a factual basis was lacking”; and (2) whether the trial court erroneously exercised its sentencing discretion. The no-merit report thoroughly discusses those issues, including references to relevant statutes, case law, transcripts, and other court documents. This court is satisfied that the no-merit report properly analyzes the issues it raises.

With respect to Jackson’s guilty pleas, the no-merit report analyzes the trial court’s compliance with WIS. STAT. § 971.08 and *State v. Bangert*, 131 Wis.2d 246, 261-62, 389 N.W.2d 12 (1986). For instance, the no-merit report notes that the trial court, among other things, told Jackson that it was not bound by the recommendations of the State and trial counsel. Appellate counsel concludes that there would be no arguable merit to asserting that Jackson’s pleas were not knowingly, voluntarily, and intelligently entered or that they lacked a factual

⁵ Trial counsel told the trial court that Jackson had “no objection to the total amount of restitution” requested.

basis. Having reviewed the records, including the plea hearing transcript, we agree with appellate counsel's conclusion.

The no-merit report also addresses the sentences that were imposed, providing citations to the sentencing transcript and analyzing the trial court's compliance with *State v. Gallion*, 2004 WI 42, ¶¶9, 41-43, 270 Wis. 2d 535, 678 N.W.2d 197. Appellate counsel concludes that there would be no arguable merit to assert that the trial court erroneously exercised its sentencing discretion, *see id.*, ¶17, or that the sentences were excessive, *see Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We agree with these assessments. The trial court thoroughly explained the sentences, which were well within the maximum potential sentences. *See State v. Scaccio*, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449 ("A sentence well within the limits of the maximum sentence is unlikely to be unduly harsh or unconscionable.").

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the convictions, and discharges appellate counsel of the obligation to represent Jackson further in these appeals.

Upon the foregoing reasons,

IT IS ORDERED that the judgments of conviction are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Michelle L. Velasquez is relieved from further representing Patrick Jackson in these appeals. *See* WIS. STAT. RULE 809.32(3).

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

Sheila T. Reiff
Clerk of Court of Appeals