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DISTRICT IV

January 16, 2025

To:

Hon. Anna L. Becker
Circuit Court Judge
Electronic Notice

Jean Sahr
Clerk of Circuit Court
Jackson County Courthouse
Electronic Notice

Thomas Brady Aquino
Electronic Notice

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Edward D. Creapeau 201056
McNaughton Corr. Center
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You are hereby notified that the Court has entered the following opinion and order:

2023AP1891-CRNM State of Wisconsin v. Edward D. Creapeau (L.C. # 2020CF90)

Before Kloppenburg, P.J., Blanchard, 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 Thomas Aquino, appointed counsel for Edward Creapeau, has filed a no-merit report seeking to withdraw as appellate counsel pursuant to WIS. STAT. RULE 809.32 (2021-22)¹ and *Anders v. California*, 386 U.S. 738 (1967). Creapeau was sent a copy of the report and has not filed a response. Based on the report and our independent review of the record, we conclude that there is no arguable merit to any issue that could be raised on appeal. Accordingly, we affirm.

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

Creapeau was found guilty by a jury and convicted on a charge of operating a motor vehicle while under the influence of an intoxicant as a ninth offense. The circuit court sentenced him to five years of initial confinement and five years of extended supervision, consecutive to a previous revocation sentence.²

The no-merit report addresses whether Creapeau could challenge the sufficiency of the evidence. We agree with counsel that there is no arguable merit to this issue. An appellate court will not overturn a conviction “unless 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.” *See State v. Poellinger*, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). “The credibility of the witnesses and the weight of the evidence is for the trier of fact.” *Id.* at 504 (quoted source omitted). Without attempting to summarize all of the testimony and other evidence in detail here, we conclude that it was easily sufficient.

Although Creapeau’s nephew testified that he, not Creapeau, was driving the vehicle on the night in question, the jury evidently disbelieved that testimony, instead crediting the considerable circumstantial evidence to the contrary. “It is well established that a finding of guilt may rest upon evidence that is entirely circumstantial and that circumstantial evidence is oftentimes stronger and more satisfactory than direct evidence.” *Id.* at 501.

² Creapeau was also found guilty on a separate charge of operating a motor vehicle with a prohibited alcohol concentration. However, he was convicted and sentenced only on the charge of operating a motor vehicle while under the influence of an intoxicant. *See* WIS. STAT. § 346.63(1)(c) (providing that if a defendant is convicted of both types of charges arising out of the same incident or occurrence, “there shall be a single conviction for purposes of sentencing”).

The no-merit report addresses whether there are other potential issues relating to the pretrial and trial proceedings. Based on our independent review of the record, we agree with counsel's assessment that there are no issues of arguable merit relating to those proceedings, including any issue with respect to the circuit court's pretrial rulings, jury selection, opening statements, evidentiary rulings at trial, Creapeau's decision not to testify, closing arguments, and the jury instructions.

The no-merit report addresses whether Creapeau could argue that the circuit court erroneously exercised its sentencing discretion. We agree with counsel that there is no arguable merit to this issue. The court addressed the required sentencing factors along with other relevant factors. See *State v. Gallion*, 2004 WI 42, ¶¶37-49, 270 Wis. 2d 535, 678 N.W.2d 197 (explaining sentencing standards and factors). The court did not rely on any improper factors. Creapeau could not reasonably argue that his sentence was unduly harsh or so excessive as to shock public sentiment. See *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975) (a circuit court erroneously exercises its discretion when "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"). We see no other arguable basis on which Creapeau might challenge his sentence.

Our review of the record discloses no other issues with arguable merit.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Thomas Aquino is relieved of any further representation of Edward Creapeau in this matter. *See* 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