

**INDEX
TO
APPENDIX**

	Page
Judgment of Conviction	101-102
Excerpt of Transcript	103-105
Order Denying Defendant's Postconviction Motion	106

State of Wisconsin vs. Gregory K Nielson

Judgment of Conviction

Sentence to Wisconsin State Prisons and Extended Supervision

Case No.: 2008CF000982

Date of Birth: 01-01-1988

FILED

APR 21 2009

CLERK OF CIRCUIT COURT
RACINE COUNTY

The defendant was found guilty of the following crime(s):

Ct.	Description	Violation	Plea	Severity	Date(s) Committed	Trial To	Date(s) Convicted
1	Homicide by Intoxicated Use of Vehicle	940.09(1)(a)	No Contest	Felony D	08-17-2008		04-17-2009

IT IS ADJUDGED that the defendant is guilty as convicted and sentenced as follows:

Ct.	Sent. Date	Sentence	Length	Agency	Comments
1	04-17-2009	State Prison	9 YR	Department of Corrections	Length of confinement and length of extended supervision for a total length of 15 years bifurcated sentence. Firearm warning given.

Total Bifurcated Sentence Time

Ct.	Confinement Period			Comments	Extended Supervision			Total Length of Sentence		
	Years	Months	Days		Years	Months	Days	Years	Months	Days
1	9	0	0		6	0	0	15	0	0

Sentence Concurrent With/Consecutive Information:

Ct.	Sentence	Type	Concurrent with/Consecutive To	Comments
1	State Prison	Consecutive	to revocation now serving.	
1	Extended Supervision	Consecutive	to revocation now serving.	

Conditions of Extended Supervision:

Obligations: (Total amounts only)

Fine	Court Costs	Attorney Fees	<input type="checkbox"/> Joint and Several Restitution	Other	Mandatory Victim/Wit. Surcharge	5% Rest. Surcharge	DNA Anal. Surcharge
	20.00			8.00	85.00		

Ct.	Condition	Agency/Program	Comments
1	Costs		
1	Employment / School	Department of Corrections	Obtain and maintain full time employment.
1	Other	Department of Corrections	Pay costs of supervision and court obligations. No contact with Deandre Barryhill or the victim's family. Cooperate with recommended treatment, counseling and programs. Take medications as prescribed. Voting prohibited until sentence has been completed and civil rights restored.
1	Alcohol assessment	Department of Corrections	No use or possession of alcohol or controlled substances. Random testing ordered. AODA and follow through with treatment, counseling and program recommendations.

Pursuant to §973.01(3g) and (3m) Wisconsin Statutes, the court determines the following:

The Defendant is is not eligible for the Challenge Incarceration Program.

The Defendant is is not eligible for the Earned Release Program.

The following charges were Dismissed but read In

Ct.	Description	Violation	Plea	Severity	Date(s) Committed	Date(s) Read In
2	Resisting or Obstructing an Officer	946.41(1)	-101-	Misd. A	08-17-2008	04-17-2009

State of Wisconsin vs. Gregory K Nielson

Judgment of Conviction

Sentence to Wisconsin State Prisons and Extended Supervision

Case No.: 2008CF000982

Date of Birth: 01-01-1988

FILED

APR 21 2009

CLERK OF CIRCUIT COURT
RACINE COUNTY

IT IS ADJUDGED that 0 days sentence credit are due pursuant to § 973.155, Wisconsin Statutes

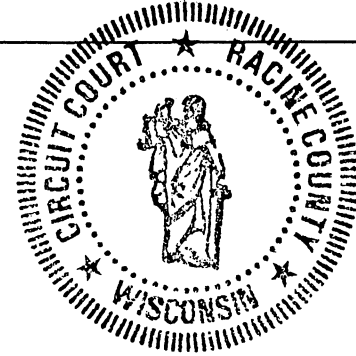
IT IS ORDERED that the Sheriff shall deliver the defendant into the custody of the Department.

BY THE COURT:

Faye M. Flancher, Judge
Robert S Repischak, District Attorney
Mark F Nielsen, Defense Attorney

[Handwritten Signature]
Circuit Court Judge/Clerk/Deputy Clerk

April 21, 2009
Date



1 I think your statements to the victim's
2 family today were appropriate and they were heart-felt,
3 and I believe, Mr. Nielsen, that you are sincerely
4 remorseful for your actions that evening.

5 Unfortunately that remorse can never bring
6 the victim back. Both Mr. Repischak and Attorney
7 Nielsen refer to a number of factors that the Court is
8 required to consider in determining what a fair and
9 appropriate sentence under all the circumstances are,
10 and clearly they're all applicable to you, Mr. Nielsen.

11 The Court considers first and foremost
12 protection of the community, and it is imperative that
13 our community be protected from drunk drivers,
14 especially under-aged drunk drivers.

15 Punishment. You killed a man. Punishment is
16 clearly an appropriate factor for this Court to
17 consider.

18 Rehabilitation. I believe that you do have
19 some rehabilitative needs. I think in the past you
20 have minimized your alcohol use and abuse, and I think
21 you need treatment for that and you have to understand,
22 Mr. Nielsen, that the fact that you have been
23 incarcerated now for a significant period of time and
24 the fact that you haven't been using alcohol doesn't
25 mean that you don't need treatment.

1 And certainly deterrence of others. It is
2 imperative that this Court does send a message to
3 under-aged people who are thinking they are going to
4 get into a car and drive without any culpability. All
5 important factors for the Court to consider.

6 The district attorney is recommending a total
7 of 20 years in prison, ten years initial confinement,
8 ten years extended supervision. The PSI writer is
9 recommending anywhere between seven and eight years of
10 initial confinement and three to four years of extended
11 supervision.

12 MR. NIELSEN: Pardon me, your Honor, I don't
13 think that's correct.

14 THE COURT: I'm reading at page six and it
15 reads: The Department of Corrections respectfully
16 recommends that the defendant be sentenced to seven to
17 eight years in the Wisconsin prison system with four
18 years of initial confinement -- excuse me, I mis-spoke
19 -- and three to four years of extended supervision.

20 MR. NIELSEN: Yes.

21 THE COURT: One of the people speaking on
22 behalf of the victim's family, and I'm sorry, I don't
23 remember who it was, it may have been Ms. King,
24 indicated that the Court treats drug offenses in this
25 community more seriously and hands down more serious

1 sentences for drug offenses than they do for things of
2 this nature, and quite honestly, I don't disagree with
3 that.

4 MS. KING: It was Ms. Roscoe.

5 THE COURT: Ms. Roscoe, thank you. This is a
6 case that an incident should have been prevented. Had
7 you not been drinking that night, I have no doubt that
8 this wouldn't have happened.

9 Based on all the factors that I'm required to
10 consider, Mr. Nielsen, I am sentencing you to 15 years
11 in prison and that will be bifurcated nine years of
12 initial confinement and six years of extended
13 supervision.

14 The time you are confined in prison,
15 Mr. Nielsen, can be extended if you violate any prison
16 regulation or if you refuse or neglect to perform any
17 required or assigned duties.

18 If your time in prison is extended under this
19 bad time provision, you could be required to serve up
20 to the total length of your prison in sentence. The
21 penalties which can be imposed by the Department of
22 Corrections are as follows: 10 days for the first
23 offense, 20 for the second offense and 40 for the third
24 and each subsequent offense.

25

STATE OF WISCONSIN

CIRCUIT COURT

RACINE COUNTY

STATE OF WISCONSIN,

Plaintiff,

v.

GREGORY K. NIELSEN,

Defendant.

**ORDER DENYING
DEFENDANT'S
POSTCONVICTION
MOTION**

Case No: 08-CF-982

IT IS HEREBY ORDERED, based on the record made in the hearing in this Court on January 29, 2010, that the defendant's postconviction motion is denied.

BY THE COURT:

Dated this 29th day of January, 2010.


HON. FAYE M. FLANCHER
Racine County Circuit Court

CERTIFICATION AS TO APPENDIX


I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with § 809.19(2)(a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; and (3) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 3rd day of May, 2010.

Signed:



DEVON M. LEE
Assistant State Public Defender
State Bar No. 1037605

Office of the State Public Defender
Post Office Box 7862
Madison, WI 53707-7862
(608) 267-5176
leede@opd.wi.gov

Attorney for Defendant-Appellant