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DISTRICT III

January 18, 2024

To:

Hon. Thomas J. Walsh
Circuit Court Judge
Electronic Notice

John VanderLeest
Clerk of Circuit Court
Brown County Courthouse
Electronic Notice

Timothy T. O'Connell
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

Sagal A. Hussein 705299
Taycheedah Correctional Inst.
P.O. Box 3100
Fond du Lac, WI 54936-3100

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

2023AP22-CRNM State of Wisconsin v. Sagal A. Hussein (L. C. No. 2020CF698)

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).

Sagal Hussein appeals from her convictions for one felony count of neglect of a child resulting in death, one felony count of hiding the corpse of a child, two misdemeanor counts of child neglect, and one misdemeanor count of obstructing an officer. She also appeals from an order denying her postconviction motion. Attorney Timothy O'Connell has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2021-22).¹ Hussein was informed of her right to respond to the no-merit report, but she has not filed a

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

response. Having independently reviewed the entire record as mandated by *Anders v. California*, 386 U.S. 738, 744 (1967), we conclude that there are no arguably meritorious issues for appeal.

According to the complaint, while following up on a welfare check on two children in Hussein's custody that had been left alone, a police officer discovered that the children's five-year-old disabled sibling was missing. When speaking with officers, Hussein gave police false information and was unable to account for the missing child's whereabouts. Thereafter, police obtained several search warrants and located the child's decaying body in a duffle bag in Hussein's car. The medical examiner determined that the child had been severely malnourished.²

Hussein agreed to plead no contest to the five charges of conviction (two of which were reduced in an amended Information from more serious charges in the complaint), in exchange for the State's agreement to dismiss and read-in several additional charges. Hussein appeared at the plea hearing by videoconference. The circuit court accepted Hussein's pleas after conducting a plea colloquy, reviewing Hussein's signed plea questionnaire, and ascertaining that there was a factual basis to support the pleas.

The circuit court ordered a presentence investigation report (PSI) and subsequently held a sentencing hearing, at which Hussein again appeared by videoconference, citing prison quarantine measures. The defense provided an alternate PSI, in which Hussein explained that

² The final autopsy report was still pending when the complaint was filed. The medical examiner subsequently determined that the cause of death was likely a seizure, possibly exacerbated by malnourishment.

she had stopped giving the child his prescribed seizure medications in favor of an alternate treatment about six months before his death and that she had panicked when she discovered him deceased, fearing that she would lose custody of her other two children.

After hearing from the parties, the victim's father, and the victim's paternal grandmother, the circuit court discussed factors related to the severity of the offenses and Hussein's character. The court then explained how those factors related to the court's sentencing goals of protecting other vulnerable members of the public, punishing Hussein, and addressing Hussein's rehabilitative needs. The court sentenced Hussein to consecutive terms of ten years' initial confinement followed by seven years' extended supervision on the felony child neglect count and five years' initial confinement followed by three years' extended supervision on the count of hiding a corpse, with lesser concurrent jail terms on the three misdemeanor counts. The court asked the parties to brief whether Hussein would be eligible for the Earned Release Program (ERP) or Challenge Incarceration Program. The court subsequently determined that Hussein was not eligible for either program based upon the seriousness of the offenses.

Hussein filed a postconviction motion challenging the ERP decision. The circuit court denied Hussein's motion, following a hearing. In its oral ruling, the court emphasized that the felony child neglect charge was especially serious because its victim was particularly vulnerable.

The no-merit report addresses the validity of the pleas and sentences, including the circuit court's determination that Hussein would not be eligible for ERP. Upon reviewing the record, we agree with counsel's conclusion that Hussein has no arguably meritorious basis to challenge either the pleas or sentences. The court conducted an adequate plea colloquy, and Hussein does not assert that she misunderstood the charges or her rights. The sentences imposed, including the

lack of ERP eligibility, were within the maximum available penalties and were not unduly harsh, given the circumstances of the case.

In addition to the issues discussed by counsel, we note that Hussein waived the right to personally appear at the plea and sentencing hearings. *See State v. Soto*, 2012 WI 93, ¶46, 343 Wis. 2d 43, 817 N.W.2d 848. Our independent review of the record discloses no other potential issues for appeal. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders*. Accordingly, counsel shall be allowed to withdraw, and the judgment of conviction will be summarily affirmed. *See* WIS. STAT. RULE 809.21.

Upon the foregoing,

IT IS ORDERED that the judgment of conviction and postconviction order are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Timothy O’Connell is relieved of any further representation of Sagal Hussein 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