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DISTRICT I

October 1, 2024

To:

Hon. Frederick C. Rosa
Circuit Court Judge
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Kathleen Henry
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

Resa Shanette Willis
514 W. Concordia Ave.
Milwaukee, WI 53210

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

2022AP1937-CRNM State of Wisconsin v. Resa Shanette Willis (L.C. # 2020CF2162)

Before Donald, P.J., Geenen and Colón, 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).

Resa Shanette Willis appeals from a judgment, entered on her no contest plea, convicting her of one count of second-degree recklessly endangering safety as an act of domestic abuse. She also appeals from an order denying her postconviction motion for sentence modification. Appellate counsel, Kathleen Henry, has filed a no-merit report, pursuant to ***Anders v. California***, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2021-22).[1] Willis was advised of her right to file a response, but she has not responded. Upon this court's independent review of the record as

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

mandated by ***Anders***, and counsel's report, we conclude there are no issues of arguable merit that could be pursued on appeal. We therefore summarily affirm the judgment and order.

Around 10:30 p.m. on June 12, 2020, Milwaukee police were dispatched to the residence of F.L.B. ("Felix").[2] Felix told the police that he and Willis have two children in common, including then-fourteen-year-old T.S.B. ("Taylor"). Felix has primary placement of the children pursuant to an Indiana court order. On the date of the call, Felix had received information about a "personal matter" involving Taylor. Taylor was unhappy with Felix's response, so she called Willis to pick her up. When Willis arrived, Taylor left the house and got into Willis's car. When Felix attempted to retrieve Taylor from the car, he and Willis got into a verbal argument about Taylor leaving. Willis began to drive away, but Felix followed on foot. Willis made a U-turn and accelerated towards Felix, who had to "barrel roll" to avoid being hit. Willis attempted to strike Felix with her vehicle twice more before driving away.

A short time later, around 10:53 p.m., Milwaukee police were dispatched to another residence for a child abuse complaint involving Taylor. When they arrived, Taylor told police that she and Willis had gotten into an argument in the car because Taylor had been caught having sex. Willis told Taylor she was going to give her "a whooping." When Willis stopped the car at their destination, Taylor got out and ran away. Willis caught up to her and struck Taylor with a belt, fourteen or fifteen times. Police observed welts and swelling on Taylor's face and left arm.

[2] For ease of reading and pursuant to the policy underlying WIS. STAT. RULE 809.86(4), we use pseudonyms instead of the victims' names.

On June 15, 2020, Willis was charged with second-degree recklessly endangering safety as an act of domestic abuse and physical abuse of a child. She was given a $1,000 personal recognizance bond at the initial appearance. After Willis failed to appear for the next two hearing dates, the circuit court issued a bench warrant. Willis was apprehended in Kentucky and extradited to Wisconsin. At the return on the warrant in October 2020, bail was set at $1,000 cash. After Willis waived her preliminary hearing, she asked for bail modification, arguing she was a single mother who needed to be out of jail in order to work to support her children. The circuit court modified Willis's bail to $100 cash, which she paid. Willis failed to appear for the next hearing date, so the circuit court again issued a bench warrant. This time, Willis was apprehended in Tennessee and extradited to Wisconsin. After the return on the warrant in February 2021, the circuit court set the bail back at $1,000 cash.

At an April 2021 final pretrial hearing date, defense counsel raised concerns about Willis's competency; Willis had refused to meet with counsel in preparation for the hearing, then refused to be transported from her cell to a room in which she would appear via Zoom. The circuit court ordered a competency evaluation. At the return on the doctor's report, defense counsel reported that Willis still refused to meet with her, so she could not ascertain as to how Willis wanted to proceed. The circuit court set the matter for an evidentiary hearing and ultimately determined that Willis was not competent but was likely to regain competency within the time permitted. The court suspended the criminal proceedings and ordered Willis committed for inpatient treatment on July 22, 2021. In January 2022, at the request of Willis's attending psychiatrist, the circuit court granted an involuntary medication order. The criminal proceedings

remained suspended through April 19, 2022, when the circuit court[3] reinstated the proceedings after finding that Willis had regained competency.

Willis then agreed to resolve her case through a plea agreement. In exchange for her plea to either of the charges, the State would dismiss and read in the other charge and would recommend a sentence of twelve months in the House of Correction, imposed and stayed for twenty-four months of probation. The State would also request just over $2,000 in restitution, as reimbursement for extradition costs. The circuit court[4] accepted Willis's no contest plea to second-degree recklessly endangering safety, then proceeded immediately to sentencing. It rejected Willis's request for a time-served disposition[5] and felt the State's recommended twelve-month sentence was not quite long enough. The circuit court imposed sixteen months of initial confinement and six months of extended supervision, with eligibility for early release programs, then stayed the sentence in favor of two years' probation. It also ordered Willis to pay $1,000 in restitution to the State.

Willis filed a postconviction motion seeking sentence modification, arguing the circuit court erroneously exercised its discretion when it imposed two years of probation instead of time served. The postconviction court[6] denied the "legally frivolous claim," noting that the circuit

[3] The Honorable Michelle A. Havas made the competency determination and reinstated proceedings.

[4] The Honorable Frederick C. Rosa, who presided over most of this matter, accepted the plea and imposed sentence.

[5] Willis was entitled to approximately 466 days of sentence credit.

[6] The Honorable Audrey K. Skwierawski decided the postconviction motion.

court had specifically explained at sentencing why it did not think a time-served sentence was adequate. Willis appeals.

As an initial matter, WIS. STAT. § 971.13(1) prohibits the trial of incompetent defendants, but the no-merit report does not discuss whether there is any arguable merit to challenging the circuit court's April 2022 competency determination. When a defendant's competency is challenged, the court must find the defendant to be incompetent "unless the State can prove, by the greater weight of the credible evidence, that the defendant is competent." ***State v. Byrge***, 2000 WI 101, ¶30, 237 Wis. 2d 197, 614 N.W.2d 477. To be competent, a defendant must possess: (1) "sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding"; and (2) "a rational as well as factual understanding of a proceeding against him or her." ***State v. Garfoot***, 207 Wis. 2d 214, 222, 558 N.W.2d 626 (1997). "[W]e will not reverse the circuit court's decision unless it was clearly erroneous." ***Byrge***, 237 Wis. 2d 197, ¶46.

An examining psychologist filed a periodic reevaluation report, *see* WIS. STAT. § 971.14(5)(b), on March 4, 2022, concluding "to a reasonable degree of professional certainty," that Willis "[did] not lack substantial mental capacity to understand the proceedings" at that time. At the circuit court's request, the psychologist also filed a short supplemental report on April 5, 2022, ahead of the evidentiary hearing set for April 19, 2022.

At the evidentiary hearing, the circuit court took judicial notice of both reports, which it confirmed it had read prior to the hearing. The psychologist testified about how she reached her conclusions, specifically noting how Willis's behavior and cooperation had improved since her commitment. The circuit court found the psychologist to be credible and stated that "her reports

and her testimony coupled together do indicate that it does appear Ms. Willis is competent to proceed…. I do find the State has met their burden; therefore, I am going to resume the proceedings." Our review of the record satisfies us that it sufficiently supports the circuit court's finding that Willis was competent to proceed and that there is no arguable merit to challenging that conclusion.[7]

The first issue that is discussed in the no-merit report is whether there is any basis for challenging the validity of Willis's no contest plea. To be valid, a guilty or no contest plea must be knowing, intelligent, and voluntary. ***State v. Bangert***, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). To that end, a number of requirements have been established for circuit courts accepting guilty pleas as a way to help ensure such pleas are properly entered by the defendant. *See, e.g.*, ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906 (listing circuit court duties); WIS. STAT. § 971.08.

Our review of the record—including the plea questionnaire and waiver of rights form and addendum, the attached jury instructions, and the plea hearing transcript—confirms that the circuit court complied with its obligations for accepting pleas. Willis also reviewed a plea questionnaire and waiver of rights form with counsel, *see* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987), in which she acknowledged that her attorney had explained the elements of the offense to her. The form correctly acknowledged the maximum penalties Willis faced and also specified the constitutional rights she was waiving with her plea.

[7] Additionally, there is no arguable merit to challenging the involuntary medication order. Willis is no longer subject to the order, so any issues arising therefore are moot. *See* ***State v. Fitzgerald***, 2019 WI 69, ¶21, 387 Wis. 2d 384, 929 N.W.2d 165.

See ***Bangert***, 131 Wis. 2d at 262, 271. There is no arguable merit to a claim that Willis's plea was anything other than knowing, intelligent, and voluntary.

The other issue discussed in the no-merit report is whether "there is an arguable claim for challenging the sentence imposed." In this section, counsel discusses both the original sentence imposed as well as the denial of the postconviction motion.

Sentencing is a matter of circuit court discretion. ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. When we review the circuit court's decision on a motion to modify sentence, we do so by "determining whether the sentencing court erroneously exercised its discretion in sentencing the defendant." ***State v. Noll***, 2002 WI App 273, ¶4, 258 Wis. 2d 573, 653 N.W.2d 895.

At sentencing, a court must consider the principal objectives of sentencing, including the protection of the community, the punishment and rehabilitation of the defendant, and deterrence to others, ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76, and determine which objective or objectives are of greatest importance, *see* ***Gallion***, 270 Wis. 2d 535, ¶41. In seeking to fulfill the sentencing objectives, the court should consider primary factors including the gravity of the offense, the character of the offender, and the protection of the public, and may consider other factors. ***State v. Odom***, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695.

Our review of the record confirms that the court appropriately considered relevant sentencing objectives and factors. In the postconviction motion, Willis asserted that the circuit court "erroneously exercised its discretion at sentencing by staying and imposing the sentence and requiring two years' probation, rather than sentencing her to time served," implying that this

sentence was unduly harsh or unconscionable. However, "[a] sentence well within the limits of the maximum sentence is unlikely to be unduly harsh or unconscionable." ***State v. Scaccio***, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449. The twenty-two-month sentence that the circuit court imposed and stayed in favor of probation is well within the ten-year range authorized by law.

Willis also argued in her motion that with respect to the gravity of the offense, Felix told the court at sentencing that he had provoked her; with respect to her character, she "has several children who need her support and … she strives to be a good parent to them"; and with respect to the need to protect the public, she has no prior history and would not be a danger to the public. Therefore, Willis argued, "an examination of the three factors the [c]ourt should consider shows the [c]ourt erred in not sentencing Ms. Willis to time served." However, the record reflects that the circuit court was aware of the factors Willis highlighted in her motion. While Willis thinks the circuit court should have weighed those factors differently, the weight to be given to each factor is committed to the circuit court's discretion. *See* ***Ziegler***, 289 Wis. 2d 594, ¶23. The circuit court in its sentencing comments specifically explained that it was rejecting a time-served sentence because "I don't want to have a situation where we just impose time served as—much as I would like to see you back in the community quickly and—and doing better, but I think there needs to be some sort of oversight or supervision here." The circuit court then stayed the sentence and imposed probation "to try and get you back in the community and working on the conditions and trying to get this behind you in the right way."

Based on the foregoing, we are satisfied that there is no arguably meritorious challenge to the circuit court's exercise of its sentencing discretion, either in setting the original sentence or in denying the motion for sentence modification.

Our independent review of the record reveals no other potential issues of arguable merit.

Upon the foregoing, therefore,

IT IS ORDERED that the judgment and order are is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Kathleen Henry is relieved of further representation of Willis 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