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October 30, 2024

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

2024AP221-CRNM State of Wisconsin v. Heather Ann Pfister (L.C. #2021CF248)

Before Neubauer, J.¹

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).

Heather Ann Pfister appeals from a judgment of the circuit court convicting her of one count of knowingly violating a harassment injunction, contrary to WIS. STAT. § 813.125(7). Pfister's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Pfister has filed a response to the no-merit report, and counsel has filed a supplemental no-merit report. Upon consideration of the no-merit report,

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2021-22). All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

Pfister's response, the supplemental no-merit report, and an independent review of the record, this court concludes that there are no issues of arguable merit for appeal. Therefore, the judgment of conviction is summarily affirmed. *See* WIS. STAT. RULE 809.21.

The State charged Pfister with one count of knowingly violating a harassment injunction and two counts of felony bail jumping. According to the criminal complaint, on January 15, 2021, a harassment injunction was issued against Pfister under WIS. STAT. § 813.125(4) that ordered her "to cease or avoid harassment of the petitioner," Victim 1, for a period of four years. In March 2021, Victim 1 contacted law enforcement regarding a series of text messages that Pfister had sent him. Victim 1 reported that he and Pfister were in the midst of a divorce and were permitted to communicate regarding child placement. He told police, however, that his communication with Pfister "often leads away from discussion of child placement or visitation and [Pfister] begins to call him names, harass, or annoy him."

In support of this allegation, Victim 1 showed police four text messages that Pfister reportedly sent him on March 13 and 14, 2021. In those messages, among other things, Pfister implied that Victim 1 had engaged in child abuse; threatened to "block direct communication" between Victim 1 and the parties' children; called Victim 1 "worthless" and a "selfish motherfucker"; and stated, "God will put you where you belong. How old is your new victim? She weighs more than she should. I know you like it that way. You get that from your dad, because you are a son of a pedophile." During an interview with law enforcement on March 20, 2021, Pfister admitted sending these text messages to Victim 1.

Pfister ultimately entered a no-contest plea to the charge of knowingly violating a harassment injunction, pursuant to a plea agreement. In exchange for Pfister's plea to that

charge, the remaining counts were dismissed and read in, and the State agreed to recommend a sentence of four months' jail and a requirement that Pfister provide a DNA sample. Following a plea colloquy, supplemented by a signed plea questionnaire and waiver of rights form, the circuit court accepted Pfister's no-contest plea, finding that it was freely, voluntarily, and intelligently entered. Pfister's attorney stipulated that the allegations in the complaint provided a factual basis for Pfister's plea. The court then proceeded directly to sentencing and imposed a time-served sentence of 240 days' jail, plus court costs and payment of a \$200 DNA surcharge.

The no-merit report addresses whether Pfister's no-contest plea was knowingly, intelligently, and voluntarily entered. The record shows that during the plea hearing, the circuit court engaged in an appropriate colloquy with Pfister and made the necessary advisements and findings required by WIS. STAT. § 971.08(1) and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. Additionally, the court properly relied on Pfister's signed plea questionnaire and waiver of rights form during the plea colloquy. *See State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987); *see also State v. Hoppe*, 2009 WI 41, ¶42, 317 Wis. 2d 161, 765 N.W.2d 794. Under these circumstances, this court agrees with appellate counsel that any claim that Pfister's plea was not knowing, intelligent, and voluntary would lack arguable merit.

The no-merit report also addresses whether there was an adequate factual basis for Pfister's plea. Again, this court agrees with appellate counsel that any challenge to Pfister's plea on this basis would lack arguable merit. A stipulation by a defendant's attorney to the facts alleged in the criminal complaint is sufficient to establish a factual basis for a plea. *See State v. Thomas*, 2000 WI 13, ¶21, 232 Wis. 2d 714, 605 N.W.2d 836. Here, Pfister's attorney

stipulated that the facts alleged in the criminal complaint provided a factual basis for Pfister's no-contest plea to knowingly violating a harassment injunction.

Furthermore, the facts alleged in the complaint are sufficient to establish a factual basis for Pfister's plea because they would permit a jury to draw reasonable inferences consistent with Pfister's guilt on each element of the charged crime. *See State v. Spears*, 147 Wis. 2d 429, 435, 433 N.W.2d 595 (Ct. App. 1988) ("A factual basis for acceptance of a plea exists if an inculpatory inference can reasonably be drawn by a jury from the facts ... even if an exculpatory inference could also be drawn and defendant asserts the latter is the correct inference" (citation omitted)). To establish Pfister's guilt at trial, the State would have been required to prove the following three elements: (1) that an injunction was issued against Pfister under WIS. STAT. § 813.125; (2) that Pfister committed an act that violated the terms of the injunction; and (3) that Pfister knew that the injunction had been issued and knew that her acts violated its terms. *See* WIS JI—CRIMINAL 2040. As discussed above, the complaint alleged that: (1) a harassment injunction was issued against Pfister on January 15, 2021, under WIS. STAT. § 813.125(4); (2) the injunction ordered Pfister "to cease or avoid harassment of" Victim 1 for a period of four years, *see* WIS. STAT. § 813.125(1)(am)4.b. (defining "harassment" to include "[e]ngaging in a course of conduct or repeatedly committing acts which harass or intimidate another person and which serve no legitimate purpose"); (3) on March 13 and 14, 2021, Pfister sent Victim 1 a series of four text messages containing abusive language; and (4) Pfister admitted sending those text messages. These allegations were sufficient to establish a factual basis with respect to each element of the charged crime.

In her response to the no-merit report, Pfister suggests that there was no factual basis for her plea because her text messages to Victim 1 "did not contain any physical threats or any

threats of any kind.” The elements of the offense, however, did not require proof that Pfister threatened Victim 1. Instead, had the case gone to trial, the State would have been required to prove that Pfister violated an injunction issued under WIS. STAT. § 813.125. *See* WIS JI—CRIMINAL 2040. According to the criminal complaint—and as confirmed by a copy of the injunction contained in the appendix to the no-merit report—the injunction issued against Pfister required her to cease or avoid conduct that harassed Victim 1. The facts alleged in the complaint are sufficient to support a reasonable inference that Pfister’s conduct violated the injunction, and proof of threats was not required. As such, any argument challenging the factual basis for Pfister’s plea would lack arguable merit.²

For these reasons, this court agrees with appellate counsel that there are no arguable grounds to challenge the validity of Pfister’s no-contest plea. Subject to a limited exception for double jeopardy claims that is not applicable here, Pfister’s plea forfeited her right to raise other nonjurisdictional defects and defenses, including claimed violations of her constitutional rights.³ *See State v. Kelty*, 2006 WI 101, ¶¶2, 18 & n. 11, 294 Wis. 2d 62, 716 N.W.2d 886; *see also State v. Lasky*, 2002 WI App 126, ¶11, 254 Wis. 2d 789, 646 N.W.2d 53.

² To the extent Pfister means to argue that the injunction violated her First Amendment right to free speech by prohibiting her from harassing Victim 1, that argument provides no basis to challenge Pfister’s conviction for knowingly violating the injunction. “[A] person convicted of violating a harassment injunction contrary to [WIS. STAT. § 813.125] may not collaterally attack the validity of the underlying injunction in a subsequent criminal prosecution for its violation.” *State v. Bouzek*, 168 Wis. 2d 642, 643, 484 N.W.2d 362 (Ct. App. 1992) (footnote omitted).

³ In her response to the no-merit report, Pfister asserts that Victim 1 “purposefully provoked a negative response from [her] in order to gain leverage within the family court proceedings.” The fact that Victim 1 may have goaded Pfister into sending the text messages, however, does not negate the allegations in the complaint showing that Pfister violated the injunction. Regardless, even if Victim 1’s alleged conduct could be construed as providing a defense to the charge, Pfister forfeited her right to assert that defense when she entered a no-contest plea. *See State v. Kelty*, 2006 WI 101, ¶18 & n. 11, 294 Wis. 2d 62, 716 N.W.2d 886.

The no-merit report also addresses whether the circuit court erroneously exercised its sentencing discretion. This court agrees with appellate counsel that there is no arguable basis to challenge the sentence imposed. Before imposing a sentence authorized by law, the court considered appropriate sentencing factors—namely, Pfister’s character, including her “significant” criminal record and her history of failing to comply with court orders, and the seriousness of Pfister’s offense. See *State v. Harris*, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). Pfister’s sentence of 240 days’ jail was within the maximum allowed by law, see WIS. STAT. § 813.125(7), and it cannot reasonably be argued that the time-served sentence was so excessive as to shock public sentiment.⁴ See *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). In addition, the record reveals no basis to challenge the imposition of court costs or the requirement that Pfister pay a \$200 DNA surcharge. See WIS. STAT. § 973.046(1r)(b) (requiring the imposition of a \$200 DNA surcharge “[f]or each conviction for a misdemeanor”).

Pfister raises several additional issues in her response to the no-merit report, none of which have arguable merit. First, Pfister suggests that the State’s decision to charge her with violating a harassment injunction is inconsistent with the proceedings in her divorce case, where she was found in contempt for failing to maintain communication with Victim 1 regarding custody. This argument lacks merit because the harassment injunction’s requirement that Pfister

⁴ Pfister apparently believes that her sentence was excessive because “sending a few harsh text messages does not warrant such an extreme sentence.” This court disagrees. The imposition of a time-served sentence for a violation of a harassment injunction by a defendant who has a “significant” criminal record and a history of violating court orders cannot reasonably be characterized as “extreme” or excessive.

Pfister also feels that, “at minimum,” her sentence should have been “run concurrent to all other cases.” As appellate counsel notes, however, at the time of Pfister’s sentencing in this case, there were no other sentences in existence with which her sentence here could have been made either concurrent or consecutive.

refrain from harassing Victim 1 is not inconsistent with a requirement that she maintain communication with Victim 1 regarding the custody and placement of their children. To the extent Pfister believes that she was improperly found in contempt in the divorce case, that contempt finding is not before this court in the present no-merit appeal.

Second, Pfister asserts that an order in the divorce case requires Victim 1 to bring the parties' children to see her in prison once a month, but Victim 1 has failed to comply with that requirement. Victim 1's alleged failure to comply with an order entered in the divorce case has no relevance to this no-merit appeal and provides no arguably meritorious basis to challenge Pfister's judgment of conviction for knowingly violating a harassment injunction.

Third, Pfister asserts that she has had "absolutely no contact" with Victim 1 for over two years, but Victim 1 nevertheless requested an extension of the harassment injunction in June 2023. Again, this assertion has no relevance to the present no-merit appeal. Victim 1's decision to seek an extension of the injunction—which occurred after Pfister's sentencing in this case—provides no basis to challenge Pfister's conviction for knowingly violating the injunction.

This court's independent review of the record discloses no other potential issues for appeal.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Nancy A. Dominski is relieved of further representation of Heather Ann Pfister 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