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DISTRICT II

September 18, 2013

To:

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

2013AP1396-CRNM State of Wisconsin v. Annmarie C. Schulte (L.C. #2011CF1014)

Before Brown, C.J., Reilly and Gundrum, JJ.

Annmarie Schulte appeals from a judgment convicting her of two counts of sexual exploitation of a child. Schulte's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2011-12)¹ and *Anders v. California*, 386 U.S. 738 (1967). Schulte received a copy of the report, was advised of her right to file a response, and has elected not to do so. After

¹ All references to the Wisconsin Statutes are to the 2011-12 version.

reviewing the record and counsel's report, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment. *See* RULE 809.21.

The no-merit report addresses the following appellate issues: (1) whether Schulte's guilty pleas were knowingly, intelligently, and voluntarily entered; (2) whether the circuit court erroneously exercised its discretion at sentencing; (3) whether the circuit court erred when it denied Schulte's pre-trial motion to suppress her statements to police; and (4) whether Schulte was afforded effective assistance of trial counsel.

With respect to the entry of the guilty pleas, the record shows that the circuit court engaged in a colloquy with Schulte that satisfied the requirements of WIS. STAT. § 971.08(1)(a), *State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986), and *State v. Hampton*, 2004 WI 107, ¶¶33, 38, 274 Wis. 2d 379, 683 N.W.2d 14.² In addition, a signed plea questionnaire and waiver of rights form was entered into the record. The court referred to that form when discussing the constitutional rights Schulte was giving up by entering her pleas. This was permissible under *State v. Moederndorfer*, 141 Wis. 2d 823, 827, 416 N.W.2d 627 (Ct. App. 1987). We agree with counsel that any challenge to the entry of Schulte's guilty pleas would lack arguable merit.

With respect to the sentence imposed, the record reveals that the circuit court's decision had a "rational and explainable basis." *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678

² There is one exception to this. The circuit court failed to provide the deportation warning required by WIS. STAT. § 971.08(1)(c). This failure does not present a potentially meritorious issue for appeal, however, as there is no indication that Schulte's pleas are likely to result in her deportation, exclusion from admission to this country, or denial of naturalization. Sec. 971.08(2).

N.W.2d 197 (citation omitted). In imposing an aggregate sentence of thirty-four years of imprisonment, the court considered the seriousness of the offense, Schulte's character, and the need to protect the public. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Under the circumstances of the case, which were aggravated by the age of the victim and her relationship to Schulte, the court's decision does not "shock public sentiment and violate the judgment of reasonable people concerning what is right and proper." *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). Accordingly, we agree with counsel that a challenge to the circuit court's decision at sentencing would lack arguable merit.

With respect to Schulte's motion to suppress, the record demonstrates that the circuit court properly denied it. Schulte had filed a motion challenging the admissibility of her inculpatory statements to police. Following a *Miranda/Goodchild* hearing on the matter,³ the circuit court denied Schulte's motion. We are satisfied that the no-merit report properly analyzes this issue as without merit, and we will not discuss it further.

Finally, with respect to whether Schulte was afforded effective assistance of trial counsel, there is nothing in the record to suggest that Schulte's counsel was ineffective. Indeed, at the plea hearing, Schulte indicated that she was satisfied with her counsel's representation. Again, we are satisfied that the no-merit report properly analyzes this issue as without merit, and we will not discuss it further.

³ See *Miranda v. Arizona*, 384 U.S. 436 (1966); *State ex rel. Goodchild v. Burke*, 27 Wis. 2d 244, 133 N.W.2d 753 (1965).

Our independent review of the record does not disclose any potentially meritorious issue for appeal. Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report and relieve Attorney Patrick Flanagan of further representation in this matter.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Patrick Flanagan is relieved of further representation of Schulte in this matter.

Diane M. Fremgen
Clerk of Court of Appeals