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October 22, 2013

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

2012AP2796-CRNM State of Wisconsin v. Latasia Monique Greer
(L.C. #2010CF5125)

Before Fine, Kessler and Brennan, JJ.

Latasia Monique Greer appeals from a judgment of conviction, entered on her guilty pleas, for one count of intentionally causing bodily harm to a child, one count of recklessly causing great bodily harm to a child, and one count of neglect of a child resulting in bodily harm, contrary to WIS. STAT. §§ 948.03(2)(b), 948.03(3)(a), and 948.21(1)(b) (2009-10).¹ She also

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

appeals from an order denying her postconviction motion to withdraw her guilty pleas. Greer's postconviction/appellate counsel, Dustin C. Haskell, has filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32, to which Greer has not responded. We have independently reviewed the record and the no-merit report as mandated by *Anders*, and we conclude that there is no issue of arguable merit that could be pursued on appeal. We therefore summarily affirm the judgment and order.

The complaint alleged that Greer's son, who was almost three years old, suffered significant injuries as a result of beatings administered by Greer and her boyfriend. The child's injuries included a fractured femur, fractured ribs, and ligature injuries caused by a belt or cord. The child was also malnourished. Greer was originally charged with five felonies. An amended information added another felony.

Greer entered a plea agreement with the State pursuant to which she agreed to plead guilty to one count of intentionally causing bodily harm to a child, one count of recklessly causing great bodily harm to a child, and one count of neglect of a child resulting in bodily harm. The remaining charges, as well as a dangerous weapon enhancer on one count, were dismissed. The plea agreement reduced Greer's total exposure from 121 years to twenty-seven years of imprisonment. The parties were free to argue for an appropriate sentence and were permitted to consider "the total facts that were set forth in the criminal complaint."

At the plea hearing, the trial court reviewed the charges with Greer.² It asked Greer for her plea to Count 2, recklessly causing great bodily harm to a child. Before Greer answered, she had an off-the-record discussion with her trial counsel, who thereafter told the trial court that Greer wanted to enter a plea of no contest. When the trial court questioned why Greer wanted to plead no contest instead of guilty as provided in the plea agreement, trial counsel again spoke with Greer off the record. Trial counsel told the trial court that Greer wanted to enter an *Alford* plea.³ The State said that it “would rather try the case,” which led to a third discussion between Greer and her trial counsel. Greer then told the trial court, “I plead guilty.”

The trial court accepted Greer’s guilty pleas to the three charges, dismissed the remaining charges and the penalty enhancer, and found Greer guilty.

At sentencing, the trial court imposed three consecutive sentences totaling thirteen years of initial confinement and nine years of extended supervision. The trial court also ordered Greer to provide a DNA sample and pay the DNA surcharge “associated with that [sample] as a component of your rehabilitation, giving back to the community for the process that has unfolded here.”

Postconviction/appellate counsel filed a motion for postconviction relief seeking plea withdrawal based on allegations that Greer did not enter her pleas knowingly, intelligently, or voluntarily “because she did not understand the charges to which she was pleading” and because

² The Honorable Ellen R. Brostrom accepted Greer’s pleas and sentenced her. The Honorable Rebecca F. Dallet conducted the postconviction motion hearing and denied Greer’s postconviction motion.

³ When a defendant enters an *Alford* plea, the defendant maintains his or her innocence but accepts the consequences of the charged offense. *See North Carolina v. Alford*, 400 U.S. 25 (1970).

her trial counsel provided ineffective assistance by not properly advising her “as to the offenses to which she was pleading.”⁴ The motion explicitly stated that Greer was not alleging a problem with the plea colloquy. See *State v. Bangert*, 131 Wis. 2d 246, 389 N.W.2d 12 (1986); Wis. STAT. § 971.08. Rather, the motion indicated, Greer was raising a challenge pursuant to *State v. Bentley*, 201 Wis. 2d 303, 548 N.W.2d 50 (1986), alleging that “the basis for her misunderstanding of the charges to which she was pleading guilty stems from evidence outside of the record.” Greer explained: “[C]onversations with her trial attorney before and during the plea hearing led Ms. Greer to believe that she was pleading guilty to child abuse by intentionally causing bodily harm and child neglect resulting in bodily harm.... She believed that all other charges were being dismissed.”

The trial court conducted an evidentiary hearing on Greer’s motion, at which both Greer and her trial counsel testified. Greer said that she believed she was pleading guilty to only two counts and that Count 2—the charge of recklessly causing great bodily harm to a child—was going to be dismissed. She testified that she thought she would have to “file” a no-contest or *Alford* plea to Count 2, but “it would just be read in.” Greer explained that at the plea hearing, after the off-the-record discussions with her trial counsel, she eventually pled guilty to Count 2 after trial counsel told her “just to plead to it or whatever and that it will go away, it would just be read in, I wouldn’t be charged with it.” Greer said that she did not believe she had been found guilty or sentenced on Count 2 until she received court papers after the sentencing hearing.

⁴ The motion also argued that Greer was entitled to plea withdrawal based on newly discovered evidence that one witness recanted. However, Greer in her trial court reply brief conceded that the evidence was not newly discovered and explicitly withdrew that argument. Therefore, it was not addressed at the postconviction hearing.

When asked about the crimes listed on the plea questionnaire, including Count 2, Greer testified that some information on the plea questionnaire, including the maximum penalty, was added after she signed it.

Trial counsel testified that he went over the plea agreement with Greer. He said that Greer did not want to plead guilty to Count 2, but the State had indicated that it would not enter a plea agreement that did not include a guilty plea to Count 1 or Count 2, both of which related to fractures the child suffered. Trial counsel said that Greer ultimately decided to accept the State's offer on the day the trial was supposed to begin.

The trial court denied Greer's motion. It explicitly found that trial counsel's testimony was credible and it said that Greer's testimony "is just, frankly, not believable, it's not credible."

The trial court said:

I don't believe that [trial counsel] added the sentence maximum [information] to this form following her signature of it... I believe that he went through all of these elements and all of the maximum penalties with her and spent a significant amount of time with her so that she understood exactly what she was going to enter a plea to and was accepting full and knowing and intelligent responsibility for it.

... [I]t was a knowing decision, a voluntary decision, knowing exactly what these maximum penalties were as being told to her by [trial counsel], by the Court, by the Plea Questionnaire form.... [T]here was no confusion on her part, there was just a hesitancy and ... she overcame that hesitancy and she made the decision freely, voluntarily and knowingly that she was going to enter that plea of guilty ... when it was clear that the State would not still accept the plea of No Contest or *Alford* to that count.

(Bolding and italics added.)

After the trial court denied the motion, postconviction/appellate counsel filed a no-merit report with this court. He explained that he had concluded that there was "no basis to appeal this

ruling because ‘the trial judge is the ultimate arbiter of the credibility of the witnesses[.]’ *Cogswell v. Robertshaw Controls Co.*, 87 Wis. 2d 243, 250, 274 N.W.2d 647 (1979)” and counsel had not identified “any basis to argue that the circuit court erred in its determination of witness credibility.”

The no-merit report considered three issues: (1) whether the pleas were knowingly, intelligently, and voluntarily entered; (2) whether Greer should be allowed to withdraw her plea based on the ineffective assistance of trial counsel; and (3) whether the trial court erroneously exercised its sentencing discretion. This court agrees with appellate counsel’s description and analysis of the potential issues identified in the no-merit report and independently concludes that pursuing them would lack arguable merit. In addition to agreeing with appellate counsel’s description and analysis, we will briefly discuss those issues.

We begin with Greer’s guilty pleas. There is no arguable basis to allege that Greer’s pleas were not knowingly, intelligently, and voluntarily entered. See *Bangert*, 131 Wis. 2d at 260. She completed a plea questionnaire and waiver of rights form, see *State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987), and the trial court conducted a thorough plea colloquy addressing Greer’s understanding of the plea agreement and the charges to which she was pleading guilty, the penalties she faced, and the constitutional rights she was waiving by entering her plea, see WIS. STAT. § 971.08; *State v. Hampton*, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14; *Bangert*, 131 Wis. 2d at 266-72. The trial court went through the elements and penalties of each crime with Greer. It also told Greer that it was not bound by the parties’ recommendations, and it confirmed that Greer had not been threatened and had not been promised anything other than the conditions of the plea agreement. Both the State and trial counsel indicated that they would stipulate that the facts in the criminal complaint served as a

basis for the plea. The plea questionnaire, waiver of rights form, Greer's discussion with her trial counsel, and the trial court's colloquy appropriately advised Greer of the elements of the crimes and the potential penalties she faced, and otherwise complied with the requirements of *Bangert* and *Hampton* for ensuring that the pleas were knowing, intelligent, and voluntary.

We also agree with the no-merit report that there would be no basis to challenge the trial court's ruling on Greer's postconviction motion, which rejected Greer's *Bentley* challenge and Greer's allegations that her trial counsel provided ineffective assistance. The trial court determined that trial counsel's testimony was more credible and accepted his testimony concerning what trial counsel told Greer before and during the plea hearing. See *Jacobson v. American Tool Cos.*, 222 Wis. 2d 384, 390, 588 N.W.2d 67 (Ct. App. 1998) (we defer to both explicit and implicit credibility findings of the trial court). Accepting the trial court's credibility assessments and factual findings, there is no basis to argue that Greer's pleas were not knowingly, intelligently, or voluntarily entered, or that her trial counsel provided ineffective assistance concerning Greer's pleas.

For the foregoing reasons, we conclude that there would be no arguable merit to a challenge to the validity of the pleas based on a *Bangert*, *Bentley*, or ineffective-assistance-of-counsel challenge, and the record discloses no other basis to seek plea withdrawal.

Turning to the sentencing, we conclude that there would be no arguable basis to assert that the trial court erroneously exercised its sentencing discretion, see *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197, that the sentence was excessive, see *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975), or that the imposition of the DNA surcharge was improper, see *State v. Cherry*, 2008 WI App 80, ¶10, 312 Wis. 2d 203, 752 N.W.2d 393.

At sentencing, the trial 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 it must determine which objective or objectives are of greatest importance, *Gallion*, 270 Wis. 2d 535, ¶41. In seeking to fulfill the sentencing objectives, the trial court should consider a variety of factors, including the gravity of the offense, the character of the offender, and the protection of the public, and it may consider several subfactors. *State v. Odom*, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695. The weight to be given to each factor is committed to the trial court’s discretion. See *Gallion*, 270 Wis. 2d 535, ¶41.

In this case, the trial court applied the standard sentencing factors and explained their application in accordance with the framework set forth in *Gallion* and its progeny. The trial court discussed the crimes, noting that they involved “depr[i]vation of food and water” and “physical torture.” The trial court also discussed Greer’s character and criminal history. It recognized that Greer herself had been a victim of abuse and that her one previous criminal conviction—a misdemeanor—was related to one particular abusive relationship. The trial court found that there was a “possibility for rehabilitation,” but it also said that it appeared Greer was “the primary actor” in her child’s abuse and recognized that “a significant amount of prison time is warranted for punishment and deterrence.” The trial court said that it was necessary to deter Greer from repeating her behavior in the future and “to send a message to the community that this is just simply not acceptable no matter what you have had to experience in your life.”

The trial court recognized that it was imposing a significant sentence, but it said that it was a “fair and appropriate sentence given the gravity of what occurred here” and it also recognized that Greer “received a tremendous benefit of the [plea] bargain.” We agree with the

trial court's assessment. By entering the plea agreement, Greer lowered her total exposure by ninety-four years. After entering her guilty pleas, she faced a maximum sentence of sixteen years of initial confinement and eleven years of extended supervision, and the trial court imposed five years less than that: thirteen years of initial confinement and nine years of extended supervision. Although the trial court imposed nearly the maximum sentence, there would be no merit to arguing that the sentence was excessive. See *Ocanas*, 70 Wis. 2d at 185. Given the severity of the crimes and the dismissed charges, the imposition of a near-maximum sentence in this case does not “shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances.” See *id.* For these reasons, there would be no arguable merit to a challenge to the trial court's sentencing discretion and the severity of the sentence.

Finally, we consider whether there would be any arguable merit to challenge the \$250 DNA surcharge.⁵ Our supreme court recently summarized the law applicable to DNA surcharges:

All defendants convicted of a felony are required to provide a DNA sample to the State Crime Laboratory. *State v. Ziller*, 2011 WI App 164, ¶9, 338 Wis. 2d 151, 807 N.W.2d 241, *review denied*, 2012 WI 45, 340 Wis. 2d 544, 811 N.W.2d 820. Unless the felony is sexual assault, the circuit court has discretion in deciding whether to impose a \$250 DNA surcharge on the defendant. *Id.* In *State v. Cherry*, 2008 WI App 80, ¶10, 312 Wis. 2d 203, 752 N.W.2d 393, the court of appeals held that a circuit court “must do something more than stat[e] it is imposing the DNA surcharge simply because it can.” At the very least, a circuit court must demonstrate that it went through a rational decision-making process. *Id.*, ¶¶10-11.

⁵ The no-merit report did not specifically discuss imposition of the DNA surcharge, except to note the reasons that the trial court offered when imposing it.

State v. Starks, 2013 WI 69, ¶21 n.6, 349 Wis. 2d 274, 833 N.W.2d 146 (brackets in *Starks*). Applying those legal standards here, we conclude that there would be no merit to challenging the trial court’s exercise of discretion. The trial court ordered Greer to pay the DNA surcharge “as a component of [her] rehabilitation” and to “giv[e] back to the community for the process that has unfolded here.” In doing so, the trial court demonstrated a rational decision-making process and explained why it was imposing the surcharge. *See id.*

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 summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Dustin C. Haskell is relieved of further representation of Greer in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals