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DISTRICT III

December 27, 2013

To:

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

2013AP1471-CRNM State of Wisconsin v. Tonya Lynn McCarrell (L.C. # 2012CF118)

Before Hoover, P.J., Mangerson and Stark, JJ.

Counsel for Tonya McCarrell has filed a no-merit report concluding there is no arguable basis for McCarrell to withdraw her no contest pleas or challenge the sentences imposed for burglary and attempted burglary. McCarrell was advised of her right to respond to the report and has not responded. Upon our independent review of the record as mandated by ***Anders v. California***, 386 U.S. 738 (1967), we conclude there is no arguable basis for appeal.

The complaint charged McCarrell with eleven crimes. Pursuant to a plea agreement, she entered no contest pleas to burglary and attempted burglary. In return, the State dropped the

habitual offender allegations and agreed to move to dismiss and read in the remaining counts. The parties agreed to jointly recommend a term of two years' initial confinement and two years' extended supervision on the burglary count, and a consecutive term of three years' probation on the attempted burglary. The court accepted the no contest pleas and sentenced McCarrell to consecutive terms totaling eight years and nine months' initial confinement and seven years and six months' extended supervision.

The record discloses no manifest injustice upon which McCarrell could withdraw her no contest pleas. *See* ***State v. Duychak***, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). The court's colloquy, supplemented by a plea questionnaire and waiver of rights form with an attachment listing the elements of burglary, informed McCarrell of the elements of the offenses, the potential penalties and the constitutional rights she waived by pleading no contest. McCarrell confirmed she understood the elements, potential penalties and the constitutional rights, she understood the proceedings, the medication she took did not interfere with her ability to understand the proceedings, and the pleas were not the product of any promises or threats. The court explained how the read ins would be considered at sentencing and that the court could order restitution for any of the offenses. As required by ***State v. Hampton***, 2004 WI 117, ¶2, 274 Wis. 2d 379, 683 N.W.2d 14, the court informed McCarrell that it was not bound by the parties' sentence recommendations and could impose the maximum sentences. The record shows the no contest pleas were knowingly, voluntarily and intelligently entered. *See* ***State v. Bangert***, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986).

The record also discloses no arguable basis for challenging the sentences. The court could have imposed consecutive sentences totaling eighteen years and nine months' imprisonment, and fines totaling $37,500. The court appropriately considered the seriousness of

the offenses including nine read-in offenses and what the court described as a "crime spree," which included a ninety mile-per-hour car chase and two home invasions of occupied residences. The court appropriately considered McCarrell's twenty previous convictions and failures while on probation. The court found incredible McCarrell's statements that she committed these crimes after she was drugged at a bar and has no memory of any of the events. McCarrell's risk assessment showed a high risk of recidivism. Although the sentences imposed exceeded the parties' recommendations, the court considered no improper factors and the sentences are not arguably so excessive as to shock public sentiment. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Our independent review of the record discloses no other potential issue for appeal. Therefore,

IT IS ORDERED that the judgment is summarily affirmed. WIS. STAT. RULE 809.21 (2011-12).

IT IS FURTHER ORDERED that attorney William Schmaal is relieved of his obligation to further represent McCarrell in this matter. WIS. STAT. RULE 809.32(3) (2011-12).

Diane M. Fremgen
Clerk of Court of Appeals