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**DISTRICT III**

January 28, 2014

To:

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

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2013AP2436-CRNM      State of Wisconsin v. Melissa Lynn Martinez (L.C. # 2011CF120)

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

Counsel for Melissa Martinez has filed a no-merit report concluding there is no arguable basis for Martinez to withdraw her no contest plea or challenge the sentence imposed for child neglect resulting in death. Martinez 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 Martinez with homicide by intoxicated use of a vehicle and child neglect resulting in death. Martinez left her eight-month-old daughter in the car with the engine

and heat running, went back into her home and passed out from drinking alcohol. A breath test conducted two and one-half hours after the baby was found dead from environmental hypothermia showed that Martinez's blood alcohol concentration was .302%.

Pursuant to a plea agreement, the homicide by intoxicated use of a vehicle charge was dismissed and read-in for sentencing purposes, and Martinez entered a no contest plea to the child neglect charge. The court imposed a sentence of three years' initial confinement and four years' extended supervision.

The record discloses no arguable manifest injustice upon which Martinez could withdraw her no contest plea. *See State v. Duychak*, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). The court's colloquy, aided by a plea questionnaire and waiver of rights form, informed Martinez of the elements of the offense, the potential penalties and the constitutional rights she waived by pleading no contest. The court warned Martinez that she could be deported based on this offense if she was not a citizen. As required by *State v. Hampton*, 2004 WI 107, ¶2, 274 Wis. 2d 379, 683 N.W.2d 14, the court informed Martinez that it was not bound by the parties' sentence recommendations. The record shows the no contest plea was knowingly, voluntarily and intelligently entered. *See State v. Bangert*, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986). Entry of a valid no contest plea constitutes a waiver of all nonjurisdictional defects and defenses. *Id.* at 293.

The record also discloses no arguable basis for challenging the sentence. The court could have imposed a sentence of twenty-five years' imprisonment and a \$100,000.00 fine. The court appropriately considered the seriousness of the offenses; Martinez's character, including four prior convictions for drunk driving; and the need to protect the public. *See State v. Harris*, 119

Wis. 2d 612, 623, 350 N.W.2d 633 (1984). 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 Ralph Sczygelski is relieved of his obligation to further represent Martinez in this matter. WIS. STAT. RULE 809.32(3) (2011-12).

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*