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DISTRICT II

April 9, 2014

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

2013AP1942-CRNM State of Wisconsin v. April M. Lindvall (L.C. #2012CF221)

Before Brown, C.J., Neubauer, P.J., and Reilly, J.

April M. Lindvall appeals from a judgment convicting her of possession of a narcotic drug. Lindvall's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2011-12)[1] and ***Anders v. California***, 386 U.S. 738 (1967). Lindvall was advised of her right to file a response but has elected not to do so. Upon consideration of the no-merit

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

report and our independent review of the record as mandated by ***Anders*** and RULE 809.32, we conclude there is no arguable merit to any issue that could be raised on appeal and that the appeal may be disposed of summarily. *See* WIS. STAT. RULE 809.21. We affirm the judgment of conviction and relieve Attorney Scott D. Connors of further representing Lindvall in this matter.

Lindvall was the passenger in a vehicle that was the subject of a traffic stop. Syringes were visible in a pocket of the driver's sweatshirt. A patdown search yielded what the driver acknowledged was heroin wrapped in tinfoil. Noting that Lindvall was "having trouble remaining conscious," the police officer asked her to empty her pockets. She produced a baggie containing what appeared to be five heroin bindles. A lab analysis confirmed the presence of heroin. Lindvall pled guilty to possession of narcotic drugs. Accepting the parties' joint recommendation, the court ordered twenty-four months probation and a withheld sentence, plus costs and a DNA sample and surcharge. This appeal followed.

The no-merit report addresses whether Lindvall's guilty plea was knowingly, voluntarily, and intelligently entered. A defendant must understand the constitutional rights he or she waives upon entering a guilty plea. *See* ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. Lindvall's signed guilty plea questionnaire and waiver of rights form is in the record, and she confirmed that she reviewed it with her counsel and understood it. The circuit court explained to Lindvall that by pleading guilty she would give up the constitutional rights listed on the form, and the court reviewed each of those rights. Lindvall again confirmed that she understood. The court properly used the signed questionnaire in conjunction with the substantive colloquy. *See* ***State v. Hoppe***, 2009 WI 41, ¶¶30-32, 317 Wis. 2d 161, 765 N.W.2d 794. It found that there was a sufficient factual basis for the crime charged, based on Lindvall's admissions to the facts alleged in the criminal complaint. *See* ***State v. Harrington***, 181Wis. 2d

985, 989, 512 N.W.2d 261 (Ct. App. 1994). The colloquy generally satisfied the requirements of WIS. STAT. § 971.08(1) and ***State v. Bangert***, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986).[2]

We further conclude that Lindvall could not pursue an arguably meritorious challenge to the sentence. Sentencing lies within the circuit court's discretion, and our review is limited to determining if discretion was erroneously exercised. ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. "When the exercise of discretion has been demonstrated, we follow a consistent and strong policy against interference with the discretion of the [circuit] court in passing sentence …." ***State v. Stenzel***, 2004 WI App 181, ¶7, 276 Wis. 2d 224, 688 N.W.2d 20. The circuit court must consider the primary sentencing factors of "the gravity of the offense, the character of the defendant, and the need to protect the public." ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The circuit court has discretion to determine which factors are relevant to the imposition of sentence and to determine the weight to assign to each. ***Stenzel***, 276 Wis. 2d 224, ¶16.

The circuit court noted the danger heroin posed to Lindvall herself and to the community at large, her progress in treatment, and recognized that she may be addressing her issues because she recognizes that she could lose her young son. The court cautioned her that if she violated her probation, she likely would go to prison both for punishment "and to keep you alive." The court saw fit to order Lindvall to pay the DNA surcharge because she would be on probation and was seeking employment. The sentence cannot be considered too harsh, as it is what she agreed to. A challenge to her sentence would lack arguable merit.

[2] We remind the court that it must advise a defendant of a plea's potential deportation (continued)

Our review of the record discloses no other potential issues for appeal.

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 Scott D. Connors is relieved of further representing Lindvall in this matter.

Diane M. Fremgen
Clerk of Court of Appeals

consequences before accepting a guilty or no-contest plea. WIS. STAT. § 971.08(1)(c).