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April 30, 2014

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

2013AP2460-CRNM State of Wisconsin v. Samantha M. Taylor-Raymond
(L.C. # 2012CM168)

Before Neubauer, P.J.[1]

Samantha Taylor-Raymond appeals from judgments convicting her of possession of drug paraphernalia contrary to WIS. STAT. § 961.573(1), possession of tetrahydrocannabinols contrary

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

to WIS. STAT. § 961.41(3g)(e),[2] and misdemeanor bail jumping contrary to WIS. STAT. § 946.49(1)(a). Taylor-Raymond's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and ***Anders v. California***, 386 U.S. 738 (1967). Taylor-Raymond received a copy of the report and was advised of her right to file a response. She has not done so. Upon consideration of the report and an independent review of the record as mandated by ***Anders*** and RULE 809.32, we modify the judgments of conviction to correct an error in the description of the crimes of conviction, and as modified, we summarily affirm the judgments because there are no issues that would have arguable merit for appeal. WIS. STAT. RULE 809.21.

The no-merit report addresses the following possible appellate issues: (1) whether Taylor-Raymond's no contest pleas were knowingly, voluntarily, and intelligently entered and had a factual basis; (2) whether the circuit court erred when it denied her motion to suppress evidence found during the execution of two search warrants; and (3) whether the circuit court misused its sentencing discretion. We agree with appellate counsel that these issues do not have arguable merit for appeal.

We agree with appellate counsel that the circuit court properly denied Taylor-Raymond's motion to suppress on the grounds that two search warrants for her property lacked probable cause or were otherwise defective. After an evidentiary hearing on the motion, the circuit court considered the totality of the circumstances and declined to suppress evidence located pursuant to either search warrant. The court determined that the first search warrant was supported by

[2] The no-merit report mistakenly states that the possession of tetrahydrocannabinols offense is subject to a deferred prosecution agreement. The deferred prosecution agreement occurred in Rusk county circuit court case No. 2013CM34.

probable cause as follows: a confidential informant provided recent information that Taylor-Raymond was selling tetrahydrocannabinols, surveillance of the residential property to be searched, and the results of a search of garbage from the residence which contained identifiers for Taylor-Raymond and evidence of tetrahydrocannabinols. The court found that the second search warrant, which was issued for a mobile home discovered during the execution of the first search warrant, was also supported by probable cause because drug paraphernalia was in plain view. The circuit court's findings are not clearly erroneous, and the court applied the proper legal standard to the motions to suppress. *See* ***State v. Gralinski***, 2007 WI App 233, ¶¶13-16, 306 Wis. 2d 101, 743 N.W.2d 448. We agree with the circuit court that both search warrants were supported by probable cause under the totality of the circumstances. *See* ***id.***, ¶15.

With regard to the entry of her no contest pleas, Taylor-Raymond answered questions about the pleas and her understanding of her constitutional rights during a colloquy with the circuit court that complied with ***State v. Hoppe***, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794. The record discloses that Taylor-Raymond's no contest pleas were knowingly, voluntarily, and intelligently entered, ***State v. Bangert***, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986), and that they had a factual basis, ***State v. Harrington***, 181 Wis. 2d 985, 989, 512 N.W.2d 261 (Ct. App. 1994). Additionally, the plea questionnaire and waiver of rights form Taylor-Raymond signed is competent evidence of knowing and voluntary pleas. ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-29, 416 N.W.2d 627 (Ct. App. 1987). Although a plea questionnaire and waiver of rights form may not be relied upon as a substitute for a substantive in-court personal colloquy, it may be referred to and used at the plea hearing to ascertain the defendant's understanding and knowledge at the time a plea is taken. ***Hoppe***, 317 Wis. 2d 161, ¶¶30-32. We

agree with appellate counsel that there would be no arguable merit to a challenge to the entry of Taylor-Raymond's no contest pleas.

After determining that probation and a fine were appropriate, the circuit court placed Taylor-Raymond on probation for possession of tetrahydrocannabinols and misdemeanor bail jumping. The court imposed a fine for possession of drug paraphernalia. These dispositions were discretionary with the circuit court. ***State v. Horn***, 226 Wis. 2d 637, 649, 594 N.W.2d 772 (1999). Taylor-Raymond agreed to these dispositions as part of the plea agreement. There would be no arguable merit to a challenge to the circuit court's dispositions.

We turn to an error in the judgments of conviction.[3] The judgments of conviction for counts 4 and 5 state that Taylor-Raymond was convicted as party to the crime. While the complaint charged counts 4 and 5 as party to the crime, the case settlement, which set out the plea agreement, did not require pleas as party to the crime, and there was no reference to party to the crime liability at the plea hearing. The judgments of conviction should not refer to party to the crime liability.

The defect is in the form of the judgment of conviction, i.e., a clerical error, which may be corrected on remand in accordance with the actual determination in the circuit court. ***State v. Prihoda***, 2000 WI 123, ¶17, 239 Wis. 2d 244, 618 N.W.2d 857. On remand, "the circuit court may either correct the clerical error … or direct the clerk's office to make such a correction."

[3] We are an error-correcting court. ***State v. Schumacher***, 144 Wis. 2d 388, 407, 424 N.W.2d 672 (1988).

Id., ¶27. Amended judgments of conviction deleting the references to party to the crime liability shall be entered.

In addition to the issues discussed above, we have independently reviewed the record. Our independent review 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, modify the judgments of conviction and, as modified, affirm the judgments. We remand this matter to the circuit court for the entry of amended judgments of conviction. Once the amended judgments of conviction have been entered, Attorney John Bachman is relieved of further representation of Taylor-Raymond in this matter.

Upon the foregoing reasons,

IT IS ORDERED that the judgments of the circuit court are modified and, as modified, are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that amended judgments of conviction shall be entered.

IT IS FURTHER ORDERED that once the amended judgments of conviction have been entered, Attorney John Bachman is relieved of further representation of Samantha Taylor-Raymond in this matter.

Diane M. Fremgen
Clerk of Court of Appeals