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October 28, 2014

To:

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

2013AP607-CRNM State of Wisconsin v. Anna Marie Hughes (L.C. # 2010CF5549)

Before Blanchard, P.J., Sherman and Kloppenburg, JJ.

Attorney Scott Obernberger, appointed counsel for Anna Marie Hughes, has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2011-12)¹ and *Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit report addresses whether there would be arguable merit to a challenge to Hughes' plea or sentencing. Hughes was sent a copy of the report, but has not filed a response. Upon independently reviewing the entire record,

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

as well as the no-merit report, we agree with counsel's assessment that there are no arguably meritorious appellate issues. Accordingly, we affirm.

Hughes was charged with first-degree reckless homicide by use of a dangerous weapon, based on the stabbing death of Hughes' live-in boyfriend. At one point, Hughes entered a plea of not guilty by reason of mental disease or defect, but did not pursue that plea when her psychological evaluations did not support it. Ultimately, pursuant to a plea agreement, Hughes pled guilty to an amended charge of second-degree reckless homicide by use of a dangerous weapon. The court sentenced Hughes to twelve years of initial confinement and eight years of extended supervision.

First, the no-merit report addresses whether there would be arguable merit to a challenge to the validity of Hughes' plea. A post-sentencing motion for plea withdrawal must establish that plea withdrawal is necessary to correct a manifest injustice, such as a plea that was not knowing, intelligent, and voluntary. *State v. Brown*, 2006 WI 100, ¶18, 293 Wis. 2d 594, 716 N.W.2d 906. Here, the circuit court conducted a plea colloquy that satisfied the court's mandatory duties to personally address Hughes and determine information such as Hughes' understanding of the nature of the charges and the range of punishments she faced, the constitutional rights she waived by entering a plea, and the direct consequences of the plea. *See State v. Hoppe*, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794. There is no indication of any other basis for plea withdrawal. Accordingly, we agree with counsel's assessment that a challenge to Hughes' plea would lack arguable merit.

Next, the no-merit report addresses whether there would be arguable merit to a challenge to Hughes' sentence. A challenge to a circuit court's exercise of its sentencing discretion must

overcome our presumption that the sentence was reasonable. *State v. Ramuta*, 2003 WI App 80, ¶23, 261 Wis. 2d 784, 661 N.W.2d 483. Here, the court explained that it considered facts relevant to the standard sentencing factors and objectives, including the seriousness of the offense, Hughes' character, the need for punishment, deterrence and to protect the public. *See State v. Gallion*, 2004 WI 42, ¶¶40-46, 270 Wis. 2d 535, 678 N.W.2d 197. The sentence was within the applicable penalty range, and was not so excessive or unduly harsh as to shock the conscience. *See State v. Grindemann*, 2002 WI App 106, ¶31, 255 Wis. 2d 632, 648 N.W.2d 507. Additionally, the court granted Hughes 256 days of sentence credit, on counsel's stipulation. We discern no erroneous exercise of the court's sentencing discretion.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

IT IS ORDERED that the judgment of conviction is summarily affirmed. *See* WIS. STAT. RULE 809.21(1).

IT IS FURTHER ORDERED that Attorney Obernberger is relieved of any further representation of Hughes in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals