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DISTRICT III

January 21, 2015

To:

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

2014AP592-CRNM State of Wisconsin v. Brenda J. Clark (L. C. #2011CF1279)

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

Counsel for Brenda Clark filed a no-merit report concluding there is no arguable basis for Clark to withdraw her no-contest plea or challenge the sentence imposed for theft, in an amount exceeding \$10,000. Clark 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 Clark with stealing between \$100,000 and \$172,000 from her employer, the Village of Ashwaubenon, by writing checks to herself without her employer's

permission. In a statement to an investigating officer, when she was advised that she took over \$172,000, she stated “she did not know it had gotten that bad, but that she honestly did not know how much she took.”

Pursuant to a plea agreement, Clark entered a no-contest plea to the charge in return for the State’s agreement not to amend the charge to multiple counts of theft. The court accepted the no-contest plea and sentenced Clark to four years’ initial confinement and four years’ extended supervision. The court imposed restitution of \$172,945, the same amount as a prior civil judgment.

The record discloses no arguable manifest injustice upon which Clark 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/Waiver of Rights form, informed Clark of the constitutional rights she waived by pleading no contest, the elements of the offense and the potential penalties. The plea questionnaire erroneously stated the maximum fine was \$10,000. However, the complaint and information correctly stated the maximum fine was \$25,000, and the court ultimately did not impose any fine. Therefore, the error in the questionnaire presents no basis for appeal. The court failed to orally inform Clark of the possible deportation consequences as required by WIS. STAT. § 971.08(1)(c). However, the presentence investigation report states Clark was born in St. Louis Missouri. Because Clark is a citizen of the United States, the court's failure to give the deportation notice presents no issue for appeal. As required by *State v. Hampton*, 2004 WI 107, ¶2, 274 Wis. 2d 379, 683 N.W.2d 14, the court informed Clark it was not bound by the plea agreement. The record shows the 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 non-jurisdictional defects and defenses. *Id.* at 293.

The record also discloses no arguable basis for challenging the sentencing court's discretion. The court could have imposed a sentence of five years' initial confinement and five years' extended supervision and a \$25,000 fine. The court appropriately considered the seriousness of the offense, Clark's character including a prior theft conviction, and the fact that she spent much of the money on luxury items. The court considered no improper factors, and the eight-year sentence is 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 Clark in this matter. WIS. STAT. RULE 809.32(3) (2011-12).

Diane M. Fremgen
Clerk of Court of Appeals