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DISTRICT I

March 2, 2015

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

2014AP2677-CRNM State of Wisconsin v. Marissa A. Flores (L.C. #2012CF3853)

Before Curley, P.J., Kessler and Brennan, JJ.

Marissa A. Flores appeals a judgment convicting her of first-degree reckless homicide after a guilty plea. Attorney Kaitlin A. Lamb filed a no-merit report, seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2013-14)¹ and *Anders v. California*, 386 U.S. 738, 744 (1967). Flores was informed of her right to file a response, but she did not do so. After considering the no-merit report and conducting an independent review of the record, we

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

conclude that there are no issues of arguable merit that Flores could raise on appeal. Therefore, we summarily affirm the judgment. *See* WIS. STAT. RULE 809.21.

Flores shot her husband Savonte Cooper, from whom she was estranged but attempting to reconcile. During an argument, she shot him in the head, killing him. According to the criminal complaint, Flores told the police that Cooper began to kick the pedestal fan in her bedroom because he was upset. Flores said she jumped to the side of her bed where she kept a gun for protection because Cooper was no longer living with her. Cooper walked out of the room, then returned with a backpack, stating that he intended to leave. Flores told the police that Cooper picked up a metal pole that was attached to the fan and told her that he was going to break her bedroom window. She told him not to. Cooper then said, “I should beat the shit outta you.” Flores said she grabbed the gun and stated, “You are not going to touch me again.” Flores said Cooper was standing in the doorway of the bedroom holding the pole in his hand when he stated, “Don’t do it, you ain’t going to do it.” Flores stated that she fired a shot in his direction, intending only to scare him, but that Cooper fell backward, bleeding from his head. Flores then called 911.

The no-merit report addresses whether Flores’s guilty plea was knowingly, voluntarily, and intelligently entered. In order to ensure that a defendant is knowingly, intelligently, and voluntarily waiving the right to trial by entering a guilty plea, the circuit court must conduct a colloquy with a defendant to ascertain that the defendant understands the elements of the crimes to which she is pleading guilty, the constitutional rights she is waiving by entering the plea, and the maximum potential penalties that could be imposed. *See* WIS. STAT. § 971.08 and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. Although “not intended to eliminate the need for the court to make a record demonstrating the defendant’s understanding of

the particular information contained therein,” the circuit court may refer to a plea colloquy and waiver of rights form, which the defendant has acknowledged reviewing and understanding, reducing “the extent and degree of the colloquy otherwise required between the trial court and the defendant.” *State v. Hoppe*, 2009 WI 41, ¶42, 317 Wis. 2d 161, 765 N.W.2d 794 (citation and quotation marks omitted).

The prosecutor stated the plea agreement on the record, and Flores’s attorney acknowledged that the agreement was in accord with his understanding. The circuit court informed Flores that the parties would each make their sentencing recommendations, but that the ultimate decision about the length of the sentence was up to the court to decide. Flores said she understood. The circuit court informed Flores of the potential maximum prison term she faced by entering the plea, and the constitutional rights and other defenses she was waiving by entering a plea. Flores said that she understood each point as the circuit court explained it to her. The circuit court asked Flores if she understood she was charged with first-degree reckless homicide, which meant that she “recklessly cause[d] the death of Savonte Cooper ... under circumstances that showed utter disregard for human life.” Flores said that she understood. The circuit court asked Flores whether she had reviewed the information on the plea questionnaire and waiver of rights form, including the attached jury instructions that listed the elements of first-degree reckless homicide, and asked whether she had discussed the elements of the offense and reviewed the jury instruction listing the elements with her lawyer. Flores told the circuit court that she had reviewed the information with her lawyer.

The circuit court informed Flores that she could be deported as a result of the conviction if she were not a citizen. *See State v. Douangmala*, 2002 WI 62, ¶46, 253 Wis. 2d 173, 646 N.W.2d 1. The circuit court ascertained that Flores was not promised anything in exchange for

her plea and she had not been threatened to enter the plea. The circuit court also found that there was a factual basis for the plea based on the facts set forth in the criminal complaint, to which Flores stipulated. Based on the circuit court's thorough plea colloquy as supplemented by the plea questionnaire and waiver of rights form, there would be no arguable merit to a claim that Flores did not knowingly, intelligently and voluntarily enter her guilty plea.

The no-merit report addresses whether there would be arguable merit to a claim that the circuit court misused its sentencing discretion. The circuit court imposed fourteen years of imprisonment, with eight years of initial confinement and six years of extended supervision. In deciding the length of Flores's prison term, the circuit court said that this was the most serious type of offense, a homicide, and Flores, Cooper's two children from previous relationships, and Cooper's family would have to live with this for the rest of their lives. The circuit court considered mitigating factors, like the fact that Flores did not have a prior record, accepted responsibility, was remorseful for her actions, and was at low risk for recidivism and violence. The circuit court also noted that "there was a history of abuse, was a history of some level of domestic violence" between Cooper and Flores and stated that the killing was not intentional, but was "certainly reckless." The circuit court explained its application of the various sentencing considerations in depth in accordance with the framework set forth in *State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. There would be no arguable merit to a claim that the circuit court's sentence was a misuse of discretion.

Our independent review of the record reveals no arguable basis for reversing the judgment of conviction. Therefore, we affirm the judgment of conviction and relieve Attorney Kaitlin A. Lamb of further representation of Flores.

IT IS ORDERED that the judgment of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

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

Diane M. Fremgen
Clerk of Court of Appeals