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

2014AP468-CRNM State of Wisconsin v. Laura Lee Saxton (L.C. #2012CF4810)

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

Laura Lee Saxton appeals from a judgment of conviction entered upon her guilty plea to a single count of first-degree reckless injury while using a dangerous weapon. Saxton's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2013-14)[1] and ***Anders v. California***, 386 U.S. 738 (1967). Saxton received a copy of the report and filed a response. Saxton's appellate counsel filed a supplemental no-merit report. Upon consideration of the no-merit and supplemental no-merit reports, Saxton's response, and our independent

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

review of the record, we conclude that the judgment may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

According to the criminal complaint, in September 2012, Saxton lay on her roommate's bed, said she was angry with him, and shot him several times in the head while he was lying on his left side. The victim also appeared to have been shot in the hand as he tried to fend off Saxton's shots. The victim ran out of the apartment, and a neighbor called the police. Officers observed injuries including several small gunshot wounds to the victim's head. In a ***Mirandized***[2] statement to law enforcement, Saxton admitted that she shot the victim but stated that it was only after he had placed his hand on her leg without consent.

The State charged Saxton with attempted first-degree intentional homicide, a class B felony. Saxton waived her preliminary hearing and pled not guilty. Subsequently, trial counsel informed the court that Saxton wished to change her plea to not guilty by reason of mental disease or defect (NGI),[3] and the trial court ordered a mental examination pursuant to WIS. STAT. § 971.16(2). Following the evaluation, the examiner filed a report opining to a reasonable degree of professional certainty "that there is not support for an exculpatory mental disease in this case. I do not believe the facts support a special plea." At the next hearing, based on the examiner's report, trial counsel informed the court that Saxton wished to withdraw her NGI plea in favor of

[2] *See* ***Miranda v. Arizona***, 384 U.S. 436 (1966).

[3] WISCONSIN STAT. § 971.15(3) provides: "Mental disease or defect excluding responsibility is an affirmative defense which the defendant must establish to a reasonable certainty by the greater weight of the credible evidence." The presence of a mental illness does not automatically excuse a defendant from the legal consequences of his or her conduct. ***State v. Duychak***, 133 Wis. 2d 307, 316-17, 395 N.W.2d 795 (Ct. App. 1986). The critical inquiry is "whether, as a result of a certain mental condition, a defendant lacks substantial capacity to either appreciate the wrongfulness of the defendant's conduct or conform the defendant's conduct to the requirements of the law." ***Id***. at 316.

a not guilty plea, and that the parties were working toward settlement. The trial court personally addressed Saxton and ascertained that she understood the difference between the two pleas and in fact wished to withdraw her NGI plea.

When the parties next appeared, they informed the court that a plea agreement had been reached whereby the State would file and Saxton would plead guilty to an amended information charging one count of first-degree reckless injury by use of a dangerous weapon, contrary to WIS. STAT. §§ 940.23(1) and 939.63(1)(b). The parties would be free to argue the appropriate sentence. Saxton confirmed that she wished to accept the plea agreement and after conducting a thorough colloquy, the trial court found her guilty and ordered the preparation of a presentence investigation report (PSI). At sentencing, the trial court first addressed restitution and ascertained Saxton's agreement that she should be ordered to pay the full $1,794.68 requested and did not wish to raise any defense to the amount based on an inability to pay. The court imposed a twenty-year bifurcated sentence with twelve years of initial confinement and eight years of extended supervision.

The no-merit report addresses whether there is any basis for a challenge to the validity of Saxton's guilty plea and whether the trial court appropriately exercised its sentencing discretion. We agree with counsel's conclusion that these issues lack arguable merit.

The record demonstrates that the trial court engaged in an appropriate colloquy and made the necessary advisements and findings required by WIS. STAT. § 971.08(1)(a) and ***State v. Bangert***, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986). As part of the plea colloquy, the trial court drew Saxton's attention to the proffered plea questionnaire/waiver of rights form and its addendum, and ascertained that she had reviewed, signed, and understood the documents. *See*

State v. Hoppe, 2009 WI 41, ¶¶30-32, 42, 317 Wis. 2d 161, 765 N.W.2d 794 (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 the plea is taken). The trial court questioned Saxton about her age, education, mental health, and medications, and Saxton confirmed that she understood the proceedings and was "[f]ully alert." The trial court specifically ascertained Saxton's understanding of the parties' plea agreement, the applicable maximum penalty,[4] and that the court was not bound by any recommendations and could impose the maximum sentence. The trial court drew Saxton's attention to the constitutional rights portion of the plea questionnaire and ensured that she read and understood each individual right and understood that by pleading guilty, she was waiving those rights and would be found guilty. *See* ***id.***, ¶42 (use of the plea questionnaire at the plea hearing lessens the extent and degree of the requisite colloquy). The court verified that Saxton reviewed the offense elements with her attorney and proceeded to recite the elements of both the substantive offense and the weapon enhancer. The trial court went through each element with Saxton, including the statutory definitions of great bodily harm and criminal recklessness. *See* WIS. STAT. §§ 939.22(14) and 939.24(1). Saxton agreed that her actions satisfied each element. The trial court thus thoroughly ascertained Saxton's understanding of the nature of and factual basis for the charge, and with the parties' consent, determined that the criminal complaint contained a sufficient

[4] The court ascertained Saxton's understanding that she was facing a maximum sentence of twenty-five years on the reckless injury charge that could be bifurcated into a maximum of fifteen years of initial confinement and ten years of extended supervision. The court further explained that the addition of the dangerous weapon enhancer increased the maximum potential term of initial confinement by five years, and that the court could therefore impose up to twenty years of initial confinement and ten years of extended supervision.

factual basis for the offense of conviction. There is no arguably meritorious challenge to the plea-taking procedures in this case.

Appointed counsel next addresses whether the trial court erroneously exercised its sentencing discretion. *See* ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197 (sentencing is committed to the trial court's discretion, and our review is limited to determining whether the court erroneously exercised that discretion). Here, in fashioning its sentence, the court considered the seriousness of the offense, the defendant's character and history, 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 trial court determined that the offense was extremely aggravated based on the impact to the victim as well as evidence of Saxton's premeditation, the number of shots fired, that they were directed at the victim's head, and there was no indication she would have stopped shooting but for the victim's intervention. In terms of Saxton's character, the trial court considered mitigating facts such as her lack of a prior criminal record, rehabilitative efforts while in jail, and cooperation, repentance, and remorse. However, the court found that there was a high need to protect the public due to the violent, extremely dangerous nature of Saxton's crime. The trial court rejected probation as a disposition, concluding that it would unduly depreciate the offense's aggravated severity and its impact on the victim. The court stated that prison was necessary to protect the public, punish Saxton, and ensure that her rehabilitative needs were addressed in a confined setting. After considering the relevant factors and the parties' recommendations, the trial court determined that a twenty-year bifurcated sentence was necessary to achieve its

sentencing objectives. There is no meritorious challenge to the trial court's exercise of sentencing discretion.[5]

Further, we cannot conclude that the sentence imposed was unduly harsh. A sentence may be considered unduly harsh or unconscionable only when it is "so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances." ***State v. Grindemann***, 2002 WI App 106, ¶31, 255 Wis. 2d 632, 648 N.W.2d 507 (citation omitted). There is a presumption that a sentence "well within the limits of the maximum sentence" is not unduly harsh. ***Id.***, ¶¶31-32 (citation omitted). Here, the twenty-year bifurcated sentence was well below the thirty-year maximum authorized by statute and is not so excessive or unusual as to shock the public's sentiment.

In her response to the no-merit report, Saxton takes issue with the findings of the NGI examiner's report, asserting "I am far sicker in my head that I was judged to be." She appears to assert that she was not mentally responsible for the offense of conviction due to her family background, mental health, and drug and alcohol consumption.

In order to withdraw a plea after sentencing, a defendant must either show that the plea colloquy was defective and the defendant did not understand information that should have been provided, ***Bangert***, 131 Wis. 2d at 274-75, or demonstrate that under the analysis of ***State v. Bentley***, 201 Wis. 2d 303, 548 N.W.2d 50 (1996), factors extrinsic to the plea colloquy rendered

[5] We observe that the trial court briefly went off the record to verify the PSI writer's assertion that Saxton was statutorily ineligible for the earned release program under WIS. STAT. § 973.01(3g).

her plea infirm. *See* ***Hoppe***, 317 Wis. 2d 161, ¶3. Saxton does not explain how her guilty plea, made pursuant to a negotiated settlement, was infirm. The record demonstrates that the NGI examiner considered Saxton's reported history of mental illness and familial abuse before concluding that there was insufficient evidence to support an NGI plea.[6] Further, upon receiving the examiner's report, the trial court personally addressed Saxton and ensured that it was her desire to withdraw her NGI plea. At the subsequent plea hearing, Saxton reaffirmed that she was voluntarily choosing to forgo the special plea in favor of a guilty plea pursuant to the parties' agreement and that she understood the consequences of her decision. She confirmed the signed and dated plea addendum, which specifically stated "I understand that by pleading I am giving up any defenses such as insanity, self-defense, intoxication, alibi, coercion or necessity." Finally, at the plea hearing, Saxton was fully and appropriately responsive during the trial court's colloquy and provided every indication that she understood the proceedings.

Saxton also states her belief that the investigating police officers discriminated against her because her ex-husband is a police officer. Saxton provides no evidence to support this vague and conclusory claim. In the face of this record, we are hard-pressed to understand how Saxton believes her speculative assertion affected the outcome of her case or her decision to

[6] The examiner's conclusion was based on a number of factors, including: (1) that Saxton was under the influence of voluntarily ingested drugs and alcohol at the time of the alleged offense; (2) Saxton was embroiled in a conflict with the victim about guns that were missing from his room; (3) reports that Saxton previously made threats or statements to the effect that she wanted the victim dead or killed; (4) Saxton told police she was acting in self-defense; and (5) Saxton's jail medical records do not suggest that she was suffering from symptoms of psychosis. The report continues:

> Indeed Ms. Saxton does not report that she was then experiencing auditory or visual hallucinations or at the time of the alleged offense. She presently reports that she has little memory for the immediate circumstances of it or her functioning at that time. Such information, too, runs contrary to an exculpatory mental disease.

accept a favorable plea agreement in the face of strong evidence of guilt. We conclude that nothing in Saxton's response to the no-merit report suggests the existence of an arguably meritorious issue.

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the judgment, and discharges appellate counsel of the obligation to represent Saxton further in this appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Michael S. Holzman is relieved from further representing Laura Lee Saxton in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals