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DISTRICT III

April 21, 2015

To:

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

2014AP2597-CRNM State v. Kira L. Parker (L. C. No. 2013CF368)

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

Counsel for Kira Parker has filed a no-merit report concluding there is no basis to challenge Parker's conviction for delivery of heroin, second and subsequent offense, as a repeater. Parker was advised of her right to respond 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 merit to any issue that could be raised on appeal and summarily affirm.

According to the criminal complaint, police were dispatched to a residence in Wausau in response to a male who may have overdosed on heroin. Parker was present at the residence and led police to the unconscious male. He was given Arcan, regained consciousness, and admitted taking heroin. Parker was taken into custody on a probation hold and subsequently admitted she had purchased the heroin. Parker was charged with delivery of heroin, second and subsequent offense, as a repeater. She was also charged with two counts of felony bail jumping, both as a repeater. Parker pled no contest to the heroin charge, and the remaining counts were dismissed and read in.

The State recommended a sentence of three years' initial confinement and three years' extended supervision to run consecutive to two prison sentences Parker was serving in Portage County, comprised of concurrent terms of three years' initial confinement and three years' extended supervision. Parker's release date to extended supervision in Portage County would be March 11, 2016. The circuit court in the present case imposed a sentence of five years' six months' initial confinement and three years' extended supervision, to run concurrent to the Portage County sentences.

There is no manifest injustice upon which Parker could withdraw her plea. *See* ***State v. Duychak***, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). The court's colloquy, buttressed by the plea questionnaire and waiver of rights form with attached jury instructions, established Parker's understanding of the constitutional rights she waived by pleading no contest and the elements of the offense. During the plea colloquy, the circuit court did not specifically inform Parker of the maximum potential penalty. However, that provides no grounds for relief. The charging language in the Information correctly stated the maximum allowable penalties and penalty enhancers. During the plea colloquy, Parker assured the court that she had read the

charge she was pleading to in its entirety, and that she understood the charge and the penalties she was facing. In addition, during the colloquy Parker admitted this was her second or subsequent offense involving narcotic drugs, and she also admitted her status as a repeater by virtue of a felony conviction for possession of methamphetamine within the five-year period immediately preceding the commission of the instant offense. The court asked Parker if she understood how the penalties were increased because of the previous convictions, and the admitted habitual criminality, and Parker responded, "Yes." Parker also represented to the court that she had a sufficient opportunity to discuss that issue with her attorney.

Parker also assured the court that her signature on the plea questionnaire and waiver of rights form signified that she read, understood and agreed to everything on the form, and that there was nothing on the form that confused her or that she did not understand. She represented to the court that she had a sufficient opportunity to thoroughly discuss with her attorney the entire plea agreement and the plea she was entering. She also advised the court that there was nothing about the case that confused her or that she did not understand. The court specifically advised Parker it was not bound by the plea agreement and could impose the maximum penalty. The criminal complaint and attached police reports provided an adequate factual basis supporting the conviction.

The court did not advise Parker of the potential deportation consequences of her plea, but that provides no grounds for relief. The record demonstrates that Parker cannot show her plea is

likely to result in deportation, as she was born in Wisconsin. *See* WIS. STAT. § 971.08(2);[1] ***State v. Douangmala***, 2002 WI 62, ¶4, 253 Wis. 2d 173, 646 N.W.2d 1.

The record also discloses no basis to challenge the court's sentencing discretion. The court considered the proper sentencing factors, including Parker's character, the seriousness of the offense and the need to protect the public. *See* ***State v. Harris***, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). The court noted Parker's numerous felony convictions for drug-related offenses, as well as bail jumping. The court concluded, "There's no doubt in my mind that the public must be protected until treatment succeeds. I find the only place that treatment can occur while the public is protected is while you're in prison." The sentence imposed was allowable by law and not unduly harsh or excessive. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Our independent review of the record discloses no other issues of arguable merit. Therefore,

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

IT IS FURTHER ORDERED that attorney Roberta Heckes is relieved of further representing Parker in this matter.

Diane M. Fremgen
Clerk of Court of Appeals

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