OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS
110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT IV/II

October 7, 2015

To:

Hon. Kenneth W. Forbeck
Circuit Court Judge
Rock County Courthouse
51 S. Main St.
Janesville, WI 53545

Hon. Richard T. Werner
Circuit Court Judge
Rock County Courthouse
51 S. Main St.
Janesville, WI 53545

Jacki Gackstatter
Clerk of Circuit Court
Rock County Courthouse
51 S. Main St.
Janesville, WI 53545

Jodi D. Bollendorf
Asst. District Attorney
51 S. Main St.
Janesville, WI 53545

Ellen J. Krahn
Assistant State Public Defender
P.O. Box 7862
Madison, WI 53707

Gregory M. Weber
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Sarah Ann Buckingham, #494178
Taycheedah Corr. Inst.
P.O. Box 3100
Fond du Lac, WI 54936-3100

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

2014AP2184-CRNM State of Wisconsin v. Sarah Ann Buckingham (L.C. #2013CF143)

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

Sarah Ann Buckingham appeals from a judgment of conviction entered upon her guilty pleas to armed robbery as a party to the crime, felony theft of a firearm as a party to the crime, and operating a motor vehicle without the owner's consent.[1] Buckingham's appellate counsel

[1] The Honorable Kenneth W. Forbeck entered the original judgment of conviction. The Honorable Richard T. Werner presided at Buckingham's restitution hearing and entered an amended judgment.

has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2013-14)[2] and ***Anders v. California***, 386 U.S. 738 (1967). Buckingham received a copy of the report, was advised of her right to file a response, and has elected not to do so. Upon consideration of the no-merit report and an independent 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.

In 2013, the State filed a complaint charging Buckingham with the following six counts: (1) armed robbery, a class C felony; (2) armed burglary, a class E felony; (3) theft of a firearm, a class H felony; (4) false imprisonment, a class H felony; (5) misdemeanor battery; and (6) taking and operating a motor vehicle without the owner's consent, a class H felony.[3] In November 2013, pursuant to a plea agreement, Buckingham pled guilty to counts one, three, and six, and on the State's motion, the remaining counts were dismissed but read in. The trial court ordered a presentence investigation report and scheduled the matter for sentencing. At the start of the March 2014 sentencing hearing, pursuant to the parties' agreement, Buckingham was permitted to withdraw her plea to count six. The court vacated the conviction and Buckingham entered a new guilty plea to a lesser charge of operating a motor vehicle without the owner's consent, a class I felony.[4] On the State's motion, the court also dismissed but read in a separate

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

[3] The first five counts charged Buckingham as a party to the crime under WIS. STAT. § 939.05.

[4] Buckingham was originally charged with and pled to a violation of WIS. STAT. § 943.23(2), which provides that "whoever intentionally takes and drives any vehicle without the consent of the owner is guilty of a Class H felony." Because Buckingham initially had permission to take the car but continued to drive it without consent, the charge was modified to a violation of § 943.23(3). Prior to re-entering her guilty plea to count six as modified, Buckingham filed with the court a newly completed plea questionnaire, and the trial court performed a second on-the-record plea colloquy.

misdemeanor case, Rock County case No. 2013CM21, and the parties proceeded to sentencing. As part of the plea agreement, the State capped its global recommendation at twenty years of initial confinement and ten years of extended supervision. The trial court imposed the following: on count one, armed robbery, fifteen years of initial confinement followed by ten years of extended supervision, to run consecutive to a previously imposed sentence; on count three, theft of a firearm, three years of initial confinement followed by two years of extended supervision, to run consecutive to count one; and, on count six, operating without owner's consent, one and one-half years of initial confinement followed by two years of extended supervision, to run concurrent with counts one and three. The court deferred a determination on restitution. Following a July 2014 hearing, the court ordered Buckingham jointly and severally liable for restitution in the amount of $46,521, and entered an amended judgment of conviction.

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

With regard to Buckingham's guilty pleas, the record demonstrates that the trial court engaged in an appropriate colloquy and made the advisements and findings required by WIS. STAT. § 971.08(1)(a) and (b) and ***State v. Bangert***, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986). The trial court specifically ascertained Buckingham's understanding of the parties' plea agreement as well as the maximum penalties and essential elements associated with each offense. The trial court drew Buckingham's attention to both completed plea questionnaires on file and confirmed that she reviewed and signed the forms. *See* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987) (a completed plea questionnaire and waiver of rights

form is competent evidence of a knowing, intelligent, and voluntary plea). The trial court referred to the constitutional rights set forth in the plea forms and ascertained that Buckingham understood and wished to waive her constitutional rights by pleading guilty. ***State v. Hoppe***, 2009 WI 41, ¶¶18, 30, 317 Wis. 2d 161, 765 N.W.2d 794 (use of the plea questionnaire at the plea hearing lessens the extent and degree of the requisite colloquy). With the parties' consent, the trial court relied on the criminal complaint and properly determined that it established a factual basis for each offense.

The no-merit report points out that the trial court failed to specifically advise Buckingham as required by ***State v. Hampton***, 2004 WI 107, ¶¶32, 38, 274 Wis. 2d 379, 683 N.W.2d 14, that it was not bound by the terms of any plea agreement. However, the no-merit states:

> First, as a threshold matter, Ms. Buckingham has not alleged that her pleas were not knowingly and voluntarily entered in that she did not understand the nature of the charges, the potential penalties, or the rights she was waiving by entering her pleas. Thus, the defense is unable to allege sufficient facts to support a motion to withdraw the pleas in accordance with ***State v. Brown***, 2006 WI 100, ¶¶36-37, 39, 293 Wis. 2d 594, 618, 619, 716 N.W.2d 906.

The mere existence of a plea colloquy defect does not give rise to an arguable plea withdrawal claim. Rather, the defendant must also be able to allege that she did not understand the omitted information. ***Id.*** Buckingham has not filed a response, and we accept appellate counsel's

representation that Buckingham cannot allege the necessary lack of understanding.[5] There is no arguably meritorious challenge to the plea-taking procedures in this case.

We also agree with appellate counsel's conclusion that no issue of arguable merit arises from the trial court's exercise of discretion at sentencing. *See* ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197 (it is well-settled that sentencing is committed to the trial court's sound discretion and our review is limited to determining whether the court erroneously exercised that discretion). In fashioning the sentence, the court considered the seriousness of the offenses, 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. In terms of offense severity, the court emphasized that this was a planned violent incident that ultimately continued over three days and severely affected the victims. The sentencing court acknowledged that Buckingham did not enter the victims' home and "was basically the getaway car driver," but determined this did not mitigate her culpability because she was aware of the violence involved and, despite ample opportunity, failed to extricate herself from the ongoing crime. Though the trial court was sympathetic to Buckingham's "tough" childhood, it was keenly aware of her lengthy juvenile and adult record and history of undesirable behavior. The court concluded that its sentence was necessary to protect the public by incapacitating Buckingham and sending a message that a crime of this magnitude would be severely punished. The court further identified the need to punish Buckingham's "reprehensible and inappropriate conduct" as a primary sentencing objective. The

[5] We observe that appellate counsel's assertion is supported by the record. The trial court specifically informed Buckingham of the potential penalties for each offense, and Buckingham told the court she had signed and reviewed with her attorney the proffered plea questionnaires, both of which state "I understand that the judge is not bound by any plea agreement or recommendations and may impose the maximum penalty."

trial court applied the relevant sentencing factors to the facts of record and reached a reasonable, explainable conclusion. *See* ***Gaugert v. Duve***, 2001 WI 83, ¶44, 244 Wis. 2d 691, 628 N.W.2d 861. Further, we cannot conclude that the sentence imposed, which was well within the statutory maximum, is so excessive or unusual so as to shock public sentiment. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Finally, we agree that no arguably meritorious issue arises from the trial court's restitution order. Buckingham did not dispute the amounts of the submitted losses but challenged her ability to pay given her limited work history and meager prison wages. The trial court ordered Buckingham and her codefendants jointly and severally liable for restitution totaling $46,521. Though WIS. STAT. § 973.20(13)(a)3. requires the court to consider a defendant's ability to pay, its determination is not circumscribed by the length of the defendant's sentence. *See* ***State v. Fernandez***, 2009 WI 29, ¶¶5, 39-40, 47, 64, 316 Wis. 2d 598, 764 N.W.2d 509. The no-merit report's discussion of this issue applies the correct law to the facts of record. We are satisfied that its thorough analysis properly concludes that there is no meritorious challenge to the trial court's restitution determination.

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 Buckingham 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 Ellen J. Krahn[6] is relieved from further representing Sarah Ann Buckingham in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals

[6] Attorney Ellen J. Krahn is successor counsel to Attorney Donald T. Lang, who filed the no-merit report.