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

October 28, 2015

To:

Hon. Nicholas McNamara
Circuit Court Judge, Br. 5
Dane County Courthouse
215 South Hamilton
Madison, WI 53703

Joseph E. Mimier
Asst. District Attorney
Rm. 3000
215 South Hamilton
Madison, WI 53703

Carlo Esqueda
Clerk of Circuit Court
Room 1000
215 South Hamilton
Madison, WI 53703

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

Jennifer Lohr
Lohr Law Office LLC
222 S. Hamilton St., Ste. 21
Madison, WI 53703

Letisha J. Larry 446861
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:

2014AP1109-CRNM State of Wisconsin v. Letisha J. Larry (L.C. # 2012CF187)

Before Kloppenburg, P.J., Higginbotham and Sherman, JJ.

Attorney Jennifer Lohr, appointed counsel for Letisha Larry, has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32; ***Anders v. California***, 386 U.S. 738, 744 (1967). The no-merit report addresses whether there would be arguable merit to a challenge to Larry's plea or sentencing, or to the circuit court's decision denying Larry's postconviction motion for sentence modification. Larry was sent a copy of the report, but has not filed a response. Upon independently reviewing the entire record, as well as the no-merit

report, we agree with counsel's assessment that there are no arguably meritorious appellate issues. Accordingly, we affirm.

Larry was charged with felony retail theft, as party to a crime and as a repeater. Pursuant to a plea agreement, Larry pled no contest to felony retail theft in this case and entered guilty or no contest pleas in three other cases, the repeater allegations were dismissed as to all cases, and the State agreed to limit its recommendation of confinement time as to all cases to a total of four years. The court sentenced Larry to two years of initial confinement and one year of extended supervision in this case, consecutive to another sentence Larry was currently serving and consecutive to prison sentences imposed in Larry's other cases. Larry moved for sentence modification, arguing that her sentence was unduly harsh as compared to her similarly situated co-defendants. The court denied her motion.

First, the no-merit report addresses whether there would be any arguable merit to a challenge to the validity of Larry's plea. A post-sentencing motion for plea withdrawal must establish that plea withdrawal is necessary to correct a manifest injustice, such as a plea that was not knowing, intelligent, and voluntary. ***State v. Brown***, 2006 WI 100, ¶18, 293 Wis. 2d 594, 716 N.W.2d 906. Here, the circuit court conducted a plea colloquy that, together with the plea questionnaire that Larry signed, established Larry's understanding of the nature of the charge, the range of punishments she faced, the constitutional rights she waived by entering a plea, and the direct consequences of the plea. *See* ***State v. Hoppe***, 2009 WI 41, ¶¶18, 30, 317 Wis. 2d 161, 765 N.W.2d 794. There is no indication of any other basis for plea withdrawal. Accordingly, we agree with counsel's assessment that a challenge to Larry's plea would lack arguable merit.

Next, the no-merit report addresses whether there would be arguable merit to a challenge to Larry's sentence. A challenge to a circuit court's exercise of its sentencing discretion must overcome our presumption that the sentence was reasonable. ***State v. Ramuta***, 2003 WI App 80, ¶23, 261 Wis. 2d 784, 661 N.W.2d 483. Here, the court explained that it considered facts relevant to the standard sentencing factors and objectives, including Larry's character and criminal history, the gravity of the offense, and the need to protect the public. *See* ***State v. Gallion***, 2004 WI 42, ¶¶17-51, 270 Wis. 2d 535, 678 N.W.2d 197. The sentence was within the maximum Larry faced, and, under the facts of this case, was not so excessive or unduly harsh as to shock the conscience. *See* ***State v. Grindemann***, 2002 WI App 106, ¶31, 255 Wis. 2d 632, 648 N.W.2d 507. Additionally, the court granted Larry thirty-three days of sentence credit, on counsel's stipulation, and found Larry eligible for the Challenge Incarceration and Earned Release Programs. The court ordered restitution as stipulated to by the parties. We discern no erroneous exercise of the court's sentencing discretion.

The no-merit report also addresses whether there would be arguable merit to a challenge to the circuit court's decision denying Larry's postconviction motion for sentence modification. Larry moved the court to modify her sentence on grounds that her sentence was unduly harsh in light of the imposed and stayed sentences received by her co-defendants. *See* ***State v. Ralph***, 156 Wis. 2d 433, 438-39, 456 N.W.2d 657 (Ct. App. 1990) (disparity in sentences between similarly situated co-defendants may support finding of unduly harsh sentence). At the postconviction motion hearing, the court explained that it did not consider Larry to be similarly situated as to her co-defendants, because the co-defendants were substantially younger than Larry and had less extensive criminal records. *See* ***State v. Toliver***, 187 Wis. 2d 346, 362, 523 N.W.2d 113 (Ct. App. 1994) (disparity between sentences of co-defendants is not improper if

sentences are individualized based on relevant factors). We conclude that a challenge to the court's decision to deny sentence modification would lack arguable merit.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of ***Anders*** and WIS. STAT. RULE 809.32.

IT IS ORDERED that the judgment of conviction and order denying postconviction relief are summarily affirmed. *See* WIS. STAT. RULE 809.21.

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

Diane M. Fremgen
Clerk of Court of Appeals