



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

March 23, 2016

To:

Hon. Daniel George
Circuit Court Judge
Columbia County Courthouse
P.O. Box 587
Portage, WI 53901-2157

Susan K. Raimer
Clerk of Circuit Court
Columbia County Courthouse
P.O. Box 587
Portage, WI 53901-2157

Andrew Hinkel
Assistant State Public Defender
P. O. Box 7862
Madison, WI 53707-7862

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

Brenda L. Yaskal
Assistant District Attorney
P. O. Box 638
Portage, WI 53901

Melissa A. Galston 618796
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:

2015AP1436-CRNM State of Wisconsin v. Melissa A. Galston (L.C. # 2013CF340)

Before Lundsten, Higginbotham, and Blanchard, JJ.

Attorney Andrew Hinkel, appointed counsel for Melissa Galston, has 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). The no-merit report addresses whether there would be arguable merit to a challenge to Galston's plea or sentencing. Galston was sent a copy of the report, but has not filed a response. Upon independently reviewing the entire record, as

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

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

Galston was charged with physical abuse of a child by conduct that created a high probability of great bodily harm. Pursuant to a plea agreement, Galston pled no contest to the charged crime, and the State agreed to limit its recommendation of initial confinement time to three years. The court sentenced Galston to three years of initial confinement and three years of extended supervision.

First, the no-merit report addresses whether there would be arguable merit to a challenge to the validity of Galston'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 and waiver of rights form that Galston signed, satisfied the court's mandatory duties to personally address Galston and determine information such as Galston's understanding of the nature of the charge and the range of punishments she faced, the constitutional rights she waived by entering a plea, and the direct consequences of the plea.² See *State v. Hoppe*, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794. There is no indication of any other basis for plea

² Counsel notes that the circuit court failed to give Galston the warning of potential immigration law consequences during the plea colloquy as required by WIS. STAT. § 971.08(1)(c), but that Galston would be unable to assert that she would suffer any such consequences as necessary to support a motion for plea withdrawal on that basis. See § 971.08(2); *State v. Douangmala*, 2002 WI 62, ¶4, 253 Wis. 2d 173, 646 N.W.2d 1. Moreover, according to the presentence investigation report, Galston was born in Wisconsin. We agree with counsel that further proceedings on this issue would lack arguable merit.

withdrawal. Accordingly, we agree with counsel's assessment that a challenge to Galston's plea would lack arguable merit.

Next, the no-merit report addresses whether there would be arguable merit to a challenge to Galston'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 the standard sentencing factors and objectives, including the seriousness of the offense, Galston's character, 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 well within the maximum Galston faced, and therefore 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 Galston five days of sentence credit, on counsel's stipulation. We discern no erroneous exercise of the court's sentencing discretion.

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 is summarily affirmed. *See* WIS. STAT. RULE 809.21.

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

Diane M. Fremgen
Clerk of Court of Appeals