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March 29, 2016

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

2016AP69-CRNM State of Wisconsin v. Illahje J. Davis (L. C. #2012CF4001)

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

Counsel for Illahje Davis has filed a no-merit report concluding there is no arguable basis for Davis to withdraw her guilty plea or challenge the sentence imposed for first-degree reckless homicide. Davis filed a response detailing her activities on the day of the offense and a document entitled "Life Story." The response identified no specific issue for appeal. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude there is no arguable basis for appeal.

The complaint charged thirteen-year-old Davis with first-degree reckless homicide, hit and run resulting in death, operating a vehicle without the owner's consent, and attempted operating a vehicle without the owner's consent. The State's witnesses reported that Davis, a gang leader, "hot wired" several vehicles to play "bumper tag." The car Davis was driving struck and killed a bicyclist. Davis then abandoned the stolen car she was driving and left the scene in one of the other stolen vehicles. One witness reported Davis was laughing about striking the victim and said something like, "He shouldn't have been in the street." Later that day, she participated in additional auto thefts. An accident reconstruction expert testified the victim was riding two or three feet from the curb, in the parking lane, and was struck by the center or driver's side of the front of the car Davis was driving. The expert found no skid marks before the point of impact.

Pursuant to a plea agreement, Davis entered a guilty plea to first-degree reckless homicide, and the other charges were dismissed and read in for sentencing purposes. The State agreed to recommend a sentence of six years' initial confinement and four years' extended supervision with sentence credit from the date of her arrest. The court accepted the guilty plea and imposed a sentence of ten years' initial confinement and six years' extended supervision concurrent with a juvenile commitment she was then serving, with sentence credit from the date of her arrest.

Although most of the record relates to challenges to Davis's competency to stand trial and her motion for reverse waiver to the juvenile court, the no-merit report inexplicably fails to address those issues. Nonetheless, our independent review of the record discloses no arguable basis for challenging the circuit court's decisions on those issues.

Shortly after Davis's initial appearance, her counsel questioned her competency to stand trial. Doctor Debra Collins submitted a report concluding Davis was not competent to stand trial, but her competency could be restored. After two other psychologists concluded Davis was malingering, based in part on Davis's mother's encouragement to feign incompetency, Davis stipulated to a finding of competency, and the court found the stipulation was knowingly, voluntarily and intelligently made.

After the court conducted several hearings on Davis's request for reverse waiver to the juvenile court, her counsel again questioned her competency to proceed. The court ordered another competency examination by Dr. Collins, who found Davis competent to proceed. That conclusion was not challenged.

Our independent review of the record discloses no arguable basis for appealing the findings that Davis was capable of understanding the proceedings and participating in her defense. *See* WIS. STAT. § 971.13.¹ Nothing in the record contradicts those findings, and Davis's subsequent participation in the proceedings supports the conclusion that she was feigning incompetence.

Whether the circuit court should retain or transfer jurisdiction to the juvenile court is a discretionary decision. *State v. Dominic E.W.*, 218 Wis. 2d 52, 56, 579 N.W.2d 282 (Ct. App. 1998). We will not reverse the circuit court's discretionary determination if the record reflects that discretion was truly exercised and, in fact, we look for reasons to sustain its decision. *Id.* The circuit court conducted multiple hearings on Davis's request for reverse waiver to the

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

juvenile court. The witnesses described in great detail the programs available in the juvenile facilities and in the prison, Davis's background, and the crimes she committed. As required by WIS. STAT. § 970.032(2), the court considered three factors that Davis had to prove by the preponderance of the evidence to justify reverse waiver: (1) that, if convicted, she could not receive adequate treatment in the criminal justice system; (2) that transferring jurisdiction to the court assigned to exercise jurisdiction under WIS. STAT. chs. 48 and 938 would not depreciate the seriousness of the offense; and (3) that retaining jurisdiction was not necessary to deter Davis or other juveniles from committing the violation of which Davis was accused. The court found it was a "close call on the treatment," but based on Davis's attempt to "fake her way out of it" during the competency examinations, "there is a failure of proof on the treatment prong." The court further found reverse waiver would unduly depreciate the seriousness of the offense. The record discloses no arguable basis for challenging the circuit court's discretionary decision.

The record discloses no arguable manifest injustice upon which Davis could withdraw her guilty plea. See *State v. Duychak*, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). In an exemplary plea colloquy, the court carefully explained the elements of the offense, the potential penalties, and the constitutional rights Davis waived by pleading guilty. The court established that the plea was not the product of any threats or promises other than the plea agreement recited in court. The record shows the plea was knowingly, voluntarily and intelligently entered. See *State v. Bangert*, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986). Entry of a valid guilty plea constitutes a waiver of all nonjurisdictional defects and defenses. *Id.* at 293.

Finally, the record discloses no arguable basis for challenging the sentencing court's discretion. The court appropriately characterized the offense as "very aggravated." It

acknowledged Davis's young age, her difficult upbringing and her mental health needs. However, it concluded the crimes were committed solely for "thrill-seeking" and "whatever is going to give [her] a rush that day." The court questioned Davis's remorse and expressed concern for public safety based on Davis's conduct. The court could have imposed a maximum sentence of sixty years' imprisonment. The sentence of ten years' initial confinement and six years' extended supervision is not arguably so excessive as to shock public sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Our independent review of the record discloses no other potential issue for appeal. Therefore,

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

IT IS FURTHER ORDERED that attorney Patrick Flanagan is relieved of his obligation to further represent Davis in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals