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**

August 15, 2016

*To*:

Hon. Nicholas J. Brazeau Jr.
Circuit Court Judge
400 Market St., P. O. Box 8095
Wisconsin Rapids, WI 54494

Heather Bravener
Clerk of Circuit Court
Clark County Courthouse
517 Court Street
Neillsville, WI 54456

Lyndsey A. B. Brunette
District Attorney
517 Court Street, Rm. 404
Neillsville, WI 54456-1903

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

Megan Sanders-Drazen
Asst. 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

Shari A. Klimmer 633660
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:

---

2016AP488-CRNM State of Wisconsin v. Shari A. Klimmer (L.C. # 2014CF147)

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

Shari Klimmer appeals a judgment convicting her of conspiracy to commit first-degree intentional homicide. Attorney Megan Sanders-Drazen has filed a no-merit report and seeks to withdraw as appellate counsel. WIS. STAT. RULE 809.32 (2013-14);[1] *see also* ***Anders v.***

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

***California***, 386 U.S. 738, 744 (1967), and ***State ex rel. McCoy v. Wisconsin Court of Appeals***, 137 Wis. 2d 90, 403 N.W.2d 449 (1987), *aff'd*, 486 U.S. 429 (1988). The no-merit report addresses the validity of the plea colloquy and sentencing. Klimmer was provided a copy of the report, but has not filed a response. Upon reviewing the entire record, as well as the no-merit report, we conclude that there are no arguably meritorious appellate issues.

Klimmer was charged with two counts of conspiracy to commit intentional homicide. The criminal complaint alleged that Klimmer conspired with her daughter to hire someone to kill two men, each of whom was the father of one of the daughter's children. Two informants, as well as an undercover police officer, were in contact with Klimmer and her daughter regarding their quest to contract out the killings, thwarting Klimmer's and her daughter's plan. Pursuant to a plea agreement, Klimmer entered a guilty plea to a single count, with the second dismissed and read-in for sentencing.

Having reviewed the plea colloquy, we find no defects and conclude that Klimmer knowingly, intelligently, and voluntarily entered her guilty plea. In order to invalidate the plea, Klimmer would be required to show that the plea colloquy was in some manner defective or that manifest injustice such as coercion, lack of a factual basis to support the charges, ineffective assistance of counsel, or the prosecutor's failure to support the negotiated plea agreement required us to invalidate the plea. ***State v. Bangert***, 131 Wis. 2d 246, 389 N.W.2d 12 (1986); ***State v. Krieger***, 163 Wis. 2d 241, 249-51 and n. 6, 471 N.W.2d 599 (Ct. App. 1991). We find no such defects. Further, the circuit court appropriately considered and relied upon the information contained in Klimmer's plea questionnaire in making its determination that Klimmer knowingly, voluntarily, and intelligently entered her pleas, where, as here, the circuit court

inquired whether she went over it with her counsel, and understood its contents. *See* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987).

Klimmer appeared at her plea hearing by means of audiovisual communication, rather than in person. We agree with appellate counsel that the circuit court made sufficient inquiry to ensure that Klimmer was aware she could appear personally before the court should she desire, and that her negative response to the court's inquiry whether she preferred to appear in person was adequate to waive her statutory right to be present in person for the plea hearing. *See* WIS. STAT. § 971.04(1)(g).

Klimmer and the State entered into a negotiated plea agreement that was placed on the record. The circuit court conducted a plea colloquy that reviewed with Klimmer her background and ability to understand the process, the many constitutional rights she was giving up, the maximum penalty,[2] the elements of the offense, the factual basis for her plea, her understanding of the read-in process as it related to the dismissed count, and inquired whether any promises had been made to Klimmer to induce her plea. The court also advised Klimmer of the firearm and voting restrictions, as well as potential immigration consequences. Trial counsel indicated her belief that Klimmer was voluntarily and knowingly entering her plea. Finally, the court inquired whether Klimmer had any questions at all, and she replied in the negative. We are satisfied that

[2] We note that either through an error in nomenclature or transcription, the transcript of the plea hearing indicates the circuit court advised Klimmer that the maximum sentence for conspiracy to commit first-degree intentional homicide was "a maximum 60 years in prison." However, the plea questionnaire correctly stated that the maximum sentence was "60 years imprisonment (40 years initial confinement, 20 years extended supervision)." The court sentenced Klimmer to sixteen years of imprisonment with seven years of initial confinement and nine years of extended supervision. Thus, it would not be meritorious to seek a plea withdrawal on the basis of the potential error. *Cf*. ***State v. Finley***, 2016 WI 63, __ Wis. 2d __, __ N.W.2d __; ***State v. Cross***, 2010 WI 70, ¶40, 326 Wis. 2d 492, 786 N.W.2d 64.

the plea colloquy meets the standard for completeness and that Klimmer's plea is valid. *See* WIS. STAT. § 971.08; ***State v. Hoppe***, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794; and ***Bangert***, 131 Wis. 2d at 266-72.

We also agree that any challenge to the circuit court's sentence would lack arguable merit. Our review of the circuit court's sentence begins with the "presumption that the [circuit] court acted reasonably," leaving the defendant with the burden to demonstrate "some unreasonable or unjustifiable basis in the record" in order for us to overturn it. ***State v. Kruger***, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). Klimmer entered a guilty plea to a single count of conspiracy to commit intentional homicide, and agreed that the circuit court would consider a second count of conspiracy to commit intentional homicide that was dismissed, but read-in, at sentencing. Thus, Klimmer faced a maximum sentence of sixty years imprisonment with forty years of initial confinement and twenty years of extended supervision.[3] The court sentenced her to sixteen years imprisonment, with seven years of initial confinement and nine years of extended supervision.

Counsel's summary of the circuit court's exercise of its sentencing discretion and the evidence in the record supporting the court's ultimate sentence demonstrates the circuit court's compliance with the requisite sentencing considerations set forth in ***State v. Gallion***, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. The court focused on the gravity of the offense, noting "[t]hey don't get any more serious than this one." The court also indicated that despite Klimmer's insistence to the contrary, it believed she wanted the victims to be killed and put the

[3] *See* WIS. STAT. §§ 939.31, 939.50(3)(b), 940.01(1)(a), 973.01(2)(b)1., and 973.01(2)(d)1.

plan in motion. The court noted it was "lucky" that Klimmer's plan was not completed. The court stated that probation would depreciate the seriousness of the offense and was not on the table. The court reviewed the need for the protection of the public, as well as its concerns regarding Klimmer's character. The court also noted the mitigating factors of the absence of a criminal record and Klimmer's positive outlook for rehabilitation. Finally, the court focused on the need for deterrence of both Klimmer and others similarly motivated. We conclude that the court fulfilled its sentencing responsibilities set forth in ***Gallion***.

The sentence that the circuit court imposed of seven years confinement and nine years extended supervision was well within the statutory range. While Klimmer's total imprisonment exposure was sixty years, the court's sentence totaled sixteen years.

A sentence well within the applicable statutory maximums is presumed not to be unduly harsh, and reviewing the record independently, as well as according the circuit court's analysis and decision due deference, we conclude that the sentence the circuit court imposed here was not "'so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances.'" ***State v. Grindemann***, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507 (quoted source omitted).

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. *See* ***State v. Allen***, 2010 WI 89, ¶¶81-82, 328 Wis. 2d 1, 786 N.W.2d 124. We conclude that any further appellate proceedings would be wholly frivolous with the meaning of ***Anders*** and WIS. STAT. RULE 809.32.

Accordingly,

IT IS ORDERED that the judgment of conviction is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Megan Sanders-Drazen is relieved of any further representation of Shari Klimmer in this matter pursuant to WIS. STAT. RULE 809.32(3).

---

*Diane M. Fremgen*
*Clerk of Court of Appeals*