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January 30, 2017

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

2016AP1348-CRNM State of Wisconsin v. Danielle Danette Stewart
(L.C. # 2015CF2516)

Before Brennan, P.J., Kessler and Brash, JJ.

Danielle Danette Stewart appeals a judgment convicting her of one count of robbery of a financial institution, party to a crime. Attorney Hans P. Koesser 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). Stewart responded. After considering the no-merit report and the response, and after conducting an independent review of the record, we conclude that

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

there are no issues of arguable merit that Stewart could raise on appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

The no-merit report first addresses whether there would be arguable merit to a claim that Stewart's guilty plea was not knowingly, intelligently and voluntarily entered. The circuit court must conduct a colloquy with a defendant before accepting a guilty or no-contest plea to ensure that the defendant is knowingly, intelligently and voluntarily waiving the right to trial. *See State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. Before accepting a plea, the circuit court must ascertain that the defendant understands the elements of the crime to which he or she is pleading guilty, the constitutional rights he or she is waiving by entering the plea, and the maximum potential penalties that could be imposed. *See* WIS. STAT. § 971.08. The circuit court may refer to a plea colloquy and waiver-of-rights form that the defendant has acknowledged reviewing and understanding, as part of its inquiry, reducing "the extent and degree of the colloquy otherwise required between the trial court and the defendant." *State v. Hoppe*, 2009 WI 41, ¶42, 317 Wis. 2d 161, 765 N.W.2d 794 (citation and quotation marks omitted).

At the plea hearing, the prosecutor stated the plea agreement on the record and Stewart's lawyer agreed that the agreement as stated was accurate. The circuit court reviewed the agreement with Stewart in detail, explaining that although one of the two charges was being dismissed, the court could still consider the charge when imposing sentence because it was being read in for sentencing. Stewart acknowledged that she understood. The circuit court also explained to Stewart that it was not bound by the plea agreement and that it was free to sentence her up to the maximum term of imprisonment regardless of the agreement. *See State v.*

Hampton, 2004 WI 107, ¶20, 274 Wis. 2d 379, 683 N.W.2d 14. Stewart said that she understood.

The circuit court explained to Stewart the maximum penalty she faced. The circuit court asked Stewart whether she had signed the plea questionnaire and waiver-of-rights form and whether her lawyer had explained the form to her. Stewart told the court that she had reviewed and signed the form, and understood the information in it. The circuit court asked Stewart whether her lawyer had explained what the State had to prove in order to convict her of the crime. She said he did. The court reviewed the elements of the crime as applied to this case to explain to Stewart what the State would have to prove. Stewart said that she understood. Stewart's lawyer informed the court that he had also reviewed the elements of the offense with Stewart and had explained the concept of being a party to a crime. The circuit court asked Stewart if she understood that she was giving up certain rights by pleading guilty and reviewed those rights with her. Stewart again said she understood.

The circuit court ascertained that no threats or promises had been made to Stewart in exchange for her plea. See *Brown*, 293 Wis. 2d 594, ¶35. The circuit court informed Stewart that if she was not a citizen of the United States of America, she could be deported if she pled guilty. See *State v. Douangmala*, 2002 WI 62, ¶46, 253 Wis. 2d 173, 646 N.W.2d 1. Stewart said that she understood. The circuit court informed Stewart that it was going to accept as true the allegations in the complaint if she pled guilty. Stewart said that she understood. Based on the circuit court's thorough plea colloquy with Stewart and her review of the plea questionnaire and waiver-of-rights form, we conclude that there would be no arguable merit to an appellate challenge to the plea.

The no-merit report next addresses whether there would be arguable merit to a claim that the circuit court misused its discretion when it sentenced Stewart to five years of initial confinement and two years of extended supervision. The circuit court explained that its goals in imposing sentence were punishment, deterrence and rehabilitation. The court acknowledged that Stewart had suffered collateral consequences as a result of her criminal actions—her four children were subject to Child in Need of Protection and Services (CHIPS) petitions and no longer in her care—but said that the public needed to be protected from people who rob banks. The circuit court considered Stewart’s minor prior record as mitigating and noted that she needed drug treatment. Given the seriousness of the crime, however, the circuit court concluded that prison was necessary to protect the community. The circuit court considered appropriate factors in deciding what length of sentence to impose and explained its application of the various sentencing guidelines in accordance with the framework set forth in *State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. Therefore, there would be no arguable merit to an appellate challenge to the sentence.

In her response, Stewart says that her lawyer assured her that she would receive no more than two years in prison. This claim is not grounds for an appeal because the transcript of the plea hearing establishes that the circuit court told Stewart that it could impose up to the maximum term of imprisonment and told her that it was not bound by the plea agreement. Stewart also points out that she had not engaged in any prior serious criminal conduct before this bank robbery. The transcript shows that the circuit court considered Stewart’s relatively minor criminal record as a factor in her favor when it sentenced her. Accordingly, there would be no arguable merit to raising this issue on appeal.

Our independent review of the record also reveals no arguable basis for reversing the judgment of conviction. Therefore, we affirm the judgment and relieve Attorney Hans P. Koesser from further representation of Stewart.

IT IS ORDERED that the judgment of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Hans P. Koesser is relieved from any further representation of Stewart in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals