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February 7, 2017

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

2016AP368-CRNM State v. Jodie M. Mather (L. C. No. 2014CF969)

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

Counsel for Jodie Mather has filed a no-merit report concluding no grounds exist to challenge Mather's conviction for child abuse by failing to prevent bodily harm, contrary to WIS. STAT. § 948.03(4)(b) (2015-16).¹ Mather was informed of her right to file a response to the no-merit report and has not responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude there is no arguable merit to any issue

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

that could be raised on appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21 (2015-16).

The State charged Mather with child abuse by failing to prevent bodily harm and child neglect resulting in bodily harm. The charges arose from allegations that Mather failed to prevent her husband from injuring her then six-year-old child. In exchange for her guilty plea to the child abuse offense, the State agreed to dismiss and read in the remaining charge and recommend probation with successful participation in Veterans Treatment Court in lieu of conditional jail time. The circuit court denied Mather's presentence motion to withdraw her guilty plea. Out of a maximum possible six-year sentence, the court withheld sentence and imposed three years' probation with successful participation in Veterans Treatment Court in lieu of conditional jail time.

The record discloses no arguable basis for withdrawing Mather's guilty plea. The circuit court's plea colloquy, as supplemented by a plea questionnaire and waiver of rights form that Mather completed, informed Mather of the elements of the offense, the potential punishment that could be imposed, and the constitutional rights she waived by entering a guilty plea. The court confirmed Mather understood the court was not bound by the terms of the plea agreement, *see State v. Hampton*, 2004 WI 107, ¶2, 274 Wis. 2d 379, 683 N.W.2d 14, and advised Mather of the deportation consequences of her plea, as mandated by WIS. STAT. § 971.08(1)(c). The court also confirmed that medication Mather was taking did not interfere with her ability to understand the proceedings. Additionally, the court found that a sufficient factual basis existed in the criminal complaint to support the conclusion that Mather committed the crime charged. The record shows the plea was knowingly, voluntarily and intelligently made. *See State v. Bangert*, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986).

Any challenge to the circuit court's denial of Mather's presentence plea withdrawal motion would lack arguable merit. A defendant seeking to withdraw a plea before sentencing bears the burden of showing by a preponderance of the evidence that there is a fair and just reason for withdrawal. *State v. Garcia*, 192 Wis. 2d 845, 862, 532 N.W.2d 111 (1995). Fair and just reasons for plea withdrawal include a genuine misunderstanding of the plea's consequences, haste and confusion in entering the plea, and coercion by counsel. *State v. Shimek*, 230 Wis. 2d 730, 739, 601 N.W.2d 865 (Ct. App. 1999). To be "fair and just," the reason must be more than a defendant's change of mind and desire to have a trial. See *State v. Canedy*, 161 Wis. 2d 565, 583, 469 N.W.2d 163 (1991). The decision to grant or deny a presentence motion for plea withdrawal is committed to the circuit court's discretion. *State v. Jenkins*, 2007 WI 96, ¶30, 303 Wis. 2d 157, 736 N.W.2d 24.

At the hearing on her plea withdrawal motion, Mather testified that at the time of her plea, she felt rushed and did not understand what was going on; that the combination of her post-traumatic stress disorder and her husband's manipulation coerced her into taking the plea offer; and due to the relationship with her husband, she had been emotionally unable to prevent her child's abuse. Mather, however, confirmed she understood that the plea offer was for probation and completion of Veterans court. Mather's trial counsel also testified about his contact with Mather, refuting Mather's characterization that he did not answer her questions or allow her to voice her opinion. Trial counsel added that he felt Mather understood what was being discussed when they were filling out the plea questionnaire on the day of the plea hearing, and she made the decision on her own.

The circuit court rejected Mather's claims that she did not understand what the plea offer was or what was happening, concluding her claims were not credible. The court found Mather is

an intelligent adult; the plea agreement was not complicated; and Mather understood enough to initiate discussions of completing Veterans court in lieu of conditional jail time. With respect to Mather's claim that her husband manipulated her into entering a guilty plea, the court determined that evidence of this was "ambiguous, at best" and did not, therefore, establish a fair and just reason for plea withdrawal. Ultimately, the court determined that Mather had failed to demonstrate by a preponderance of the evidence that her wish to withdraw the plea was anything other than a change of heart. The circuit court, as fact-finder, is the ultimate arbiter of witness credibility, and we must uphold its factual findings unless they are clearly erroneous. *See State v. Peppertree Resort Villas, Inc.*, 2002 WI App 207, ¶19, 257 Wis. 2d 421, 651 N.W.2d 345; *see also* WIS. STAT. § 805.17(2). The court's credibility determination is supported by the record, and it reached a conclusion that a reasonable judge could reach.

The record discloses no arguable basis for challenging the sentence imposed. Before imposing a sentence authorized by law, the court considered the seriousness of the offense; Mather's character; the need to protect the public; and the mitigating factors Mather raised. *See State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. It cannot reasonably be argued that Mather's sentence is 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 pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Michael J. Herbert is relieved of further representing Mather in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals