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DISTRICT II

February 15, 2017

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

2016AP2132-CRNM State of Wisconsin v. Christina M. Lavender (L.C. # 2014CF77)

Before Neubauer, C.J., Gundrum and Hagedorn, JJ.

Christina M. Lavender appeals from a judgment of conviction for delivery of heroin as a second offense and an order denying her postconviction motion. Her appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2015-16)¹ and *Anders v. California*, 386 U.S. 738 (1967). Lavender received a copy of the report and was advised of her right to file a response. She has elected not to do so. Upon consideration of the report and an independent

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

review of the record, we conclude that the judgment may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

Lavender was charged with two counts of delivery of heroin after participating in controlled buys by a confidential informant. On one occasion Lavender delivered the heroin. On the second occasion she drove her dealer to the arranged meeting place, which was within 1000 feet of a high school. Lavender entered a guilty plea to count one and the second count was dismissed as a read-in at sentencing. The prosecution agreed to recommend no more than ten years' initial confinement and complied with that agreement at sentencing.² Lavender was sentenced to five years' initial confinement and five years' extended supervision. Lavender filed a postconviction motion alleging that the sentence was excessive and her right to due process was violated by the sentencing court's reliance on the COMPAS³ portion of the presentence investigation report. The circuit court denied the postconviction motion concluding that its reference to the COMPAS analysis was for the purpose of assessing Lavender's personal characteristics and that it was not used in a determinative manner.

The no-merit report addresses the potential issues of whether Lavender's plea was freely, voluntarily and knowingly entered, whether the sentence was the result of an erroneous exercise of discretion, whether the denial of the postconviction motion was an erroneous exercise of discretion, and whether Lavender was denied the effective assistance of trial counsel. This court

² Lavender faced a maximum period of incarceration of sixteen and one-half years. At sentencing the prosecution recommended nine and one-half years' initial confinement and five years' extended supervision.

³ "COMPAS' stands for 'Correctional Offender Management Profiling for Alternative Sanctions.'" *State v. Loomis*, 2016 WI 68, ¶4 n.10, 371 Wis. 2d 235, 881 N.W.2d 749.

is satisfied that the no-merit report properly analyzes the issues it raises as without merit, and this court will not discuss them further.

Our review of the record discloses no other potential issues for appeal.⁴ Accordingly, this court accepts the no-merit report, affirms the conviction and order, and discharges appellate counsel of the obligation to represent Lavender further in this appeal.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of conviction and order are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Mark A. Schoenfeldt is relieved from further representing Christina M. Lavender in this appeal. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals

⁴ Any other possible appellate issues from the proceedings before entry of the plea are waived because Lavender's guilty plea waived the right to raise nonjurisdictional defects and defenses, including claimed violations of constitutional rights. *State v. Lasky*, 2002 WI App 126, ¶11, 254 Wis. 2d 789, 646 N.W.2d 53.