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**DISTRICT IV**

March 29, 2017

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

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2015AP1915-CRNM      State of Wisconsin v. Dawn M. Meredith (L.C. # 2014CM314)

Before Lundsten, J.

Dawn Meredith appeals a judgment convicting her of misdemeanor theft. She also appeals an order for restitution. Attorney Philip Brehm has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2015-16);<sup>1</sup> *see also Anders v. California*, 386 U.S. 738, 744 (1967); *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 Meredith's plea and sentence, including an award of restitution. Meredith was sent a copy of the

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2015-16 version, unless otherwise noted.

report, and has filed a response claiming that she is innocent and that she pled guilty only to get out of jail because she had outside responsibilities and was not getting her medications in jail. Upon reviewing the entire record, as well as the no-merit report, we conclude that there are no arguably meritorious appellate issues.

First, we see no arguable basis for plea withdrawal. In order to withdraw a plea after sentencing, a defendant must either show that the plea colloquy was defective in a manner that resulted in the defendant actually entering an unknowing plea, or demonstrate some other manifest injustice, such as coercion, the lack of a factual basis to support the charge, ineffective assistance of counsel, or failure by the prosecutor to fulfill the plea agreement. See *State v. Bangert*, 131 Wis. 2d 246, 389 N.W.2d 12 (1986); *State v. Krieger*, 163 Wis. 2d 241, 249-51 & n.6, 471 N.W.2d 599 (Ct. App. 1991). There is no indication of any such defect here.

Meredith entered a no contest plea pursuant to a negotiated plea agreement that was reduced to writing, signed, and filed in court. In exchange for Meredith's plea to misdemeanor theft, the State agreed to drop an additional charge of criminal damage to property, and to make a joint recommendation that the court withhold sentence and impose one year of probation. The State followed through on its end of the bargain.

The circuit court conducted a plea colloquy, inquiring into Meredith's ability to understand the proceedings and the voluntariness of her plea decision, and further exploring Meredith's understanding of the nature of the charges, the penalty ranges and other direct consequences of the plea, and the constitutional rights she would waive by entering the plea. See WIS. STAT. § 971.08; *State v. Hoppe*, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794; *Bangert*, 131 Wis. 2d at 266-72. As part of the colloquy, the court specifically asked Meredith

whether she understood that she was giving up the opportunity to challenge or contest the allegations against her, and whether she agreed that, if the matter went to trial, there would be enough evidence to convict her. Meredith answered both questions affirmatively.

In addition, Meredith provided the court with a signed plea questionnaire. Meredith indicated to the court that she understood the information explained on that form, and she is not now claiming to have misunderstood any of her rights. See *State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). Rather, Meredith contends that her decision to enter a plea was essentially involuntary due to her pretrial detention. There is a difference, however, between motivation that may be caused by the pressure inherent in facing criminal charges, and improper coercion in which a defendant “is not given a fair or reasonable alternative to choose from.” See *Craker v. State*, 66 Wis. 2d 222, 229, 223 N.W.2d 872 (1974) (internal quotation marks and citation omitted). Here, Meredith had the choice to remain in custody and have a jury trial, or to enter a plea with a joint recommendation for probation. While the decision may have been difficult, it did not amount to illegal coercion—particularly when Meredith’s bail had been revoked due to her own conduct.

The facts set forth in the complaint—namely, that a couple with whom Meredith had been staying reported to police that they believed Meredith had stolen several items from them, and that a police officer discovered one of the missing items in Meredith’s room—provided a sufficient factual basis for the plea.

Additionally, Meredith indicated satisfaction with her attorney, and there is nothing in the record to suggest that counsel’s performance was in any way deficient. Nor has Meredith alleged any other facts that would rise to the level of a manifest injustice. Therefore, there is no

arguably meritorious basis for Meredith to challenge her plea, which operated to waive all nonjurisdictional defects and defenses—including her claim of innocence. *See State v. Kelty*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886.

Finally, a challenge to Meredith’s term of probation would also lack arguable merit because the court followed the joint recommendation of the parties. *See State v. Scherreiks*, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989) (a defendant may not challenge on appeal a sentence that he or she affirmatively approved). The amount of restitution and Meredith’s ability to pay either from her disability payments or some sort of work were supported by evidence presented at a restitution hearing as to the estimated replacement cost of two laptops and software programs that had been loaded onto them, a mouse, an iPad, and a subwoofer.

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 within the meaning of *Anders* and WIS. STAT. RULE 809.32.

Accordingly,

IT IS ORDERED that the judgment of conviction and order for restitution are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Philip Brehm is relieved of any further representation of Dawn Meredith in this matter pursuant to WIS. STAT. RULE 809.32(3).

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