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**DISTRICT III**

June 13, 2017

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

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2016AP1683-CRNM      State of Wisconsin v. Jennifer L. Fendryk (L. C. No. 2013CF137)

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

Counsel for Jennifer Fendryk filed a no-merit report concluding there is no arguable basis for Fendryk to withdraw her no-contest pleas or challenge the sentences imposed for two counts of neglecting a child resulting in great bodily harm, and one count each of child abuse/failure to prevent great harm, false imprisonment, and causing mental harm to a child, all as a party to a crime. Fendryk was advised of her right to respond to the 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 basis for appeal.

Fendryk was charged with eleven crimes based on allegations of physical abuse and neglect of two children who lived in her household with their father. According to the complaint, five-year-old J.M.P. weighed only twenty-four pounds due to chronic malnutrition. J.M.P. lost twelve pounds in a nine-month period while she was living with her father and Fendryk. She was not allowed to eat what the rest of the family ate. J.M.P. told an investigator she was locked in her room “all of the time and only gets out when her daddy lets her exercise, when she has to work like scrub the floor or she has to go to the bathroom.” She said she was not allowed to have any toys or play with anyone. She stated “her Daddy and Jen got really mad at her and used a knife and were going to cut off her hands.”

J.A.T. confirmed her sister’s allegations, and said she watched her father board up the window in J.M.P.’s bedroom so that J.M.P. could not look out the window. She said her father kept a monitor in J.M.P.’s room so they could hear if she tried to get out or get food. J.A.T. also said that more than ten times she saw J.M.P. get a “time-out” by being put outside on a deck in the dark for at least ten minutes regardless of the weather, and J.M.P. would cry when it was really cold, as she wore only shorts and a t-shirt.

The complaint further alleged J.M.P. was diagnosed with reactive attachment disorder, and Fendryk falsified information to health care providers and failed to follow through with medical recommendations.

J.A.T. also reported she was abused by her father. He zip-tied her hands above her head to a pole on a very hot day. J.A.T. passed out because of the heat and found when she awoke that her arm had been burned. Photographs of J.A.T. show she still suffers from serious disfigurement as a result of the incident. After J.M.P. was removed from their home, J.A.T. said

“her dad and Jen were mad at her now.” They would make her sit alone in her room or on a chair all day, they took away her toys, and she did not get as much food.

The children’s father admitted to an investigator that he and Fendryk used food as a disciplinary tool to control J.M.P.’s behavior, and that he would lock her in her room at night and used monitors and motion detectors to “keep an eye on her.” If J.M.P. “acted out,” he would make her sleep on the floor without a blanket. He admitted J.M.P. was always hungry and thirsty. He also admitted restricting her interaction with other children in the house and that he gave J.M.P. time-outs on an outdoor deck in winter and summer months. He admitted zip-tying J.A.T.’s hands, but denied that he tied her to a pole.

Fendryk told an investigator that J.M.P.’s father decided not to follow medical direction to put J.M.P. on a feeding schedule because they did not think she needed it, and they forgot about it when they went to another doctor. Fendryk told the investigator that food was withheld from J.M.P. to control her behavior and there were nights when J.M.P. would sneak out of her bedroom to “steal food,” and that is why they locked her in her bedroom. She said she knew nothing about J.A.T. being zip-tied, but believed J.A.T. suffered a heat stroke and, after she passed out, they put her in a shower in lieu of seeking medical attention.

Pursuant to a plea agreement, Fendryk entered no-contest pleas to five offenses, and six comparable charges were dismissed and read-in for sentencing purposes. The court imposed concurrent and consecutive sentences totaling eleven and one-half years’ initial confinement and seven years’ extended supervision.

The record discloses no arguable manifest injustice upon which Fendryk could withdraw her no-contest pleas. See *State v. Duychak*, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App.

1986). The circuit court's colloquy, supplemented by a Plea Questionnaire/Waiver of Rights form with attached jury instructions, informed Fendryk of the constitutional rights she waived by pleading no contest, the elements of the offenses, and the potential penalties. As required by *State v. Hampton*, 2004 WI 107, ¶20, 274 Wis. 2d 379, 683 N.W.2d 14, the court informed Fendryk it was not bound by the parties' sentence recommendations. The circuit court also gave Fendryk the deportation warning required by WIS. STAT. § 971.08(1)(c).<sup>1</sup> Fendryk stipulated that there was a factual basis for her pleas. The circuit court appropriately found Fendryk's pleas were freely, voluntarily and intelligently entered. See *State v. Bangert*, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986).

The record discloses no arguable basis for challenging the sentencing court's discretion. The court could have imposed terms of imprisonment totaling fifty-six years. The court appropriately considered the seriousness of the offenses, Fendryk's character, and the need to protect the public. See *State v. Harris*, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). The court considered no improper factors, and the sentences imposed do not arguably shock public sentiment as to what is appropriate under the circumstances. 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 of conviction is summarily affirmed. WIS. STAT. RULE 809.21.

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

IT IS FURTHER ORDERED that attorney Catherine Malchow is relieved of her obligation to further represent Fendryk in this matter. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published and may not be cited except as provided under WIS. STAT. RULE 809.23(3)

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