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**DISTRICT II**

September 27, 2017

To:

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

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2016AP750-CRNM      State of Wisconsin v. Brittany A. Tipton (L.C. #2014CF951)

Before Reilly, P.J., Gundrum and Hagedorn, JJ.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Brittany Tipton appeals from a judgment convicting her of second-degree reckless homicide contrary to WIS. STAT. § 940.06(1) (2013-14). Tipton's appellate counsel filed a no-

merit report pursuant to WIS. STAT. RULE 809.32 (2015-16)<sup>1</sup> and *Anders v. California*, 386 U.S. 738 (1967). Tipton received a copy of the report and was advised of her right to file a response. She has not done so. Upon consideration of the report and an independent review of the record as mandated by *Anders* and RULE 809.32, we summarily affirm the judgment because there are no issues that would have arguable merit for appeal. WIS. STAT. RULE 809.21.

The no-merit report addresses the following possible appellate issues: (1) whether Tipton's no contest plea was knowingly, voluntarily, and intelligently entered and (2) whether the circuit court misused its sentencing discretion. We agree with appellate counsel that these issues do not have arguable merit for appeal.

With regard to the entry of her no contest plea, Tipton answered questions about the plea and her understanding of her constitutional rights during a colloquy with the circuit court that complied with *State v. Hoppe*, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794. As part of the plea colloquy, the circuit court drew Tipton's attention to the plea questionnaire and waiver of rights form Tipton signed. The court confirmed that Tipton read and understood the questionnaire, pointed out the presence of the constitutional rights appearing on the front of the questionnaire, and confirmed that Tipton read and understood those rights. *Id.*, ¶¶30-32, 42 (although a plea questionnaire cannot be relied upon as a substitute for a substantive in-court personal colloquy, the questionnaire may be referred to and used at the plea hearing to ascertain the defendant's understanding and knowledge at the time the plea is taken and the use of the questionnaire lessens the extent and degree of the requisite colloquy). The plea questionnaire

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

form Tipton signed is competent evidence of a knowing and voluntary plea. *State v. Moederndorfer*, 141 Wis. 2d 823, 827-29, 416 N.W.2d 627 (Ct. App. 1987). The record discloses that Tipton’s no contest plea was knowingly, voluntarily, and intelligently entered, *State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986), and that it had a factual basis, *State v. Harrington*, 181 Wis. 2d 985, 989, 512 N.W.2d 261 (Ct. App. 1994). We agree with appellate counsel that there would be no arguable merit to a challenge to the entry of Tipton’s no contest plea.

With regard to the sentence, the record reveals that the sentencing court’s discretionary decision had a “rational and explainable basis.” *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (citation omitted). The court adequately discussed the facts and factors relevant to sentencing Tipton to a ten-year term (five years of initial confinement and five years of extended supervision). In fashioning the sentence, the court considered the seriousness of the offense, Tipton’s character, addiction and addiction treatment history, and the need to protect the public. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The sentence complied with WIS. STAT. § 973.01 relating to the imposition of a bifurcated sentence of confinement and extended supervision. The weight of the sentencing factors was within the circuit court’s discretion. *State v. Stenzel*, 2004 WI App 181, ¶16, 276 Wis. 2d 224, 688 N.W.2d 20. The \$250 DNA surcharge was appropriately imposed. WIS. STAT. § 973.046(1r)(a). We agree with appellate counsel that there would be no arguable merit to a challenge to the sentences.

In addition to the issues discussed above, we have independently reviewed the record. Our independent review of the record did not disclose any potentially meritorious issue for appeal. Because we conclude that there would be no arguable merit to any issue that could be

raised on appeal, we accept the no-merit report, affirm the judgment of conviction, and relieve Attorney Marcella de Peters of further representation of Tipton in this matter.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Marcella de Peters is relieved of further representation of Brittany Tipton in this matter.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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