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**DISTRICT II/III**

October 24, 2017

To:

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

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2016AP1479-CRNM      State of Wisconsin v. Barbara J. Andersen  
(L. C. No. 2013CF253)

Before Stark, P.J., Hruz and Seidl, 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).**

Counsel for Barbara Andersen has filed a no-merit report concluding there is no basis to challenge Andersen's conviction for delivery of narcotics near a school, second or subsequent offense, as a repeat offender. Andersen has filed a response, and counsel has filed a supplemental no-merit report. 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 that could be raised on appeal and summarily affirm. *See* WIS. STAT. RULE 809.21 (2015-16).<sup>1</sup>

Andersen was a seventy-two-year-old woman who pled no contest to selling narcotics to a confidential informant as a second or subsequent offense, having possessed that substance near an elementary school, as a repeater. The circuit court's plea colloquy, buttressed by the plea questionnaire and waiver of rights form, informed Andersen of the elements of the offense, the constitutional rights she waived by pleading no contest, and the potential punishment. Andersen was advised the court was not bound by any plea agreement and could impose the maximum penalty. The court failed to advise Andersen of the potential deportation consequences outlined in WIS. STAT. §§ 971.08(1)(c) and (2). However, she was not prejudiced because the record establishes she is a United States citizen. Andersen conceded the criminal complaint provided a proper factual basis supporting the conviction. The record shows the plea was knowingly, intelligently and voluntarily entered. *See State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986).

Andersen claims in her response to the no-merit report that she was framed, coerced, or another individual delivered the narcotics. However, entry of a valid no-contest or guilty plea constitutes a waiver of all nonjurisdictional defenses and defects. *Id.* at 260-62. Andersen also argues her attorney promised her probation if she pled, but correspondence from Andersen attached to an affidavit appended to the supplemental no-merit report states, "my trial lawyer said I'd probably get probation," which is not an unequivocal promise.

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

The record also discloses no basis for challenging the circuit court’s sentencing discretion. The court considered the proper factors, including Andersen’s character, the seriousness of the offense, and the need to protect the public. *See State v. Harris*, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). The court emphasized Andersen’s “repetitive criminal behavior” and her multiple convictions for selling drugs. The court stated, “You are dangerous to other people.” The court indicated, “So I’m sorry you’re in this spot at your age, Ms. Andersen, but you never wanted to change what is very criminal behavior.” The sentence imposed of three years’ initial confinement and three years’ extended supervision was far less than the maximum allowable at law and therefore was presumptively neither harsh nor excessive. *See State v. Grindemann*, 2002 WI App 106, ¶¶29-33, 255 Wis. 2d 632, 648 N.W.2d 507.

Our independent review of the record discloses no other potential issues for appeal.

IT IS ORDERED that the judgment is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Michael Holzman is relieved of further representing Andersen in this matter. *See* WIS. STAT. RULE 809.32.

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*