OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS
110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

November 29, 2017

To:

Hon. Michael J. Aprahamian
Circuit Court Judge
Waukesha County Courthouse-Br. 9
515 W. Moreland Blvd.
Waukesha, WI 53188

Kathleen A. Madden
Clerk of Circuit Court
Waukesha County Courthouse
515 W. Moreland Blvd.
Waukesha, WI 53188

Bradley J. Lochowicz
Seymour, Kremer, Koch, Lochowicz & Duquette
P.O. Box 470
Elkhorn, WI 53121-0470

Susan Lee Opper
District Attorney
515 W. Moreland Blvd., Rm. G-72
Waukesha, WI 53188-2486

Criminal Appeals Unit
Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

Nicole K. Glinsey, #453811
Taycheedah Corr. Inst.
P.O. Box 3100
Fond du Lac, WI 54936-3100

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

2017AP640-CRNM State of Wisconsin v. Nicole K. Glinsey (L.C. # 2016CF515)

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).

Nicole K. Glinsey appeals from a judgment of conviction for being a party to the crime of identity theft. Her appellate counsel, Attorney Bradley J. Lochowicz, 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). Glinsey filed a response to the no-merit report and counsel then filed a supplemental no-merit report.[2] RULE 809.32(1)(e), (f). Upon consideration of these submissions and an independent 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.

Glinsey was charged as a repeater with being a party to the crimes of misdemeanor theft and four counts of identity theft after a wallet was stolen from a purse at a fitness club in Brookfield, on December 14, 2015, and a stolen credit card was used at four different Walgreens stores that same day. She was also charged with three counts of felony bail jumping. Surveillance video showed Glinsey's arrival at the fitness club and presence in a stairwell tucking a wallet under her arm. Glinsey was released on bail in three Waukesha County cases when the December 14, 2015 crimes were committed. A no contest plea was entered to being a party to the crime of identity theft and, under the plea agreement, all other counts and bail jumping charges in a separate case were dismissed as read-ins at sentencing. The prosecution was free to recommend prison time and leave to the sentencing court's discretion whether the sentence would be concurrent or consecutive to any other sentence. Glinsey was sentenced to the maximum—three years' initial confinement and three years' extended supervision—

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

[2] Counsel was appointed in three cases in which Nicole K. Glinsey was sentenced on the same day. Appointed counsel filed three separate no-merit reports and three separate supplemental no-merit reports. Glinsey has filed a single response to all three no-merit reports. The cases that were handled together for plea and sentencing were consolidated and placed on hold pending a decision by the Wisconsin Supreme Court in ***State v. Odom***, No. 2015AP2525-CR.

consecutive to the sentences imposed the same day in two other cases.[3] The sentencing court also made Glinsey not eligible for the Challenge Incarceration and Substance Abuse Programs.

The no-merit report addresses the potential issues of whether Glinsey's plea was freely, voluntarily and knowingly entered and whether the sentence was the result of an erroneous exercise of discretion or unduly harsh. The plea hearing fully conformed to the strictures of ***State v. Bangert***, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986), and the trial court engaged in an appropriate colloquy and made the necessary advisements and findings required by WIS. STAT. § 971.08(1), ***Bangert***, and ***State v. Hampton***, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. In fashioning the sentence, the circuit court discussed the relevant sentencing factors and objectives. It applied them in a reasoned and reasonable manner in assessing Glinsey's personal characteristics, the nature of the offense, that she committed the crime in this case while still on bail after entering pleas in two other cases, and the need to protect the community from her repeated conduct. We agree with the assessment that no issues of arguable merit arise from either the plea taking or sentencing.

In her response to the no-merit report, Glinsey first drops the suggestion that she received multiple punishments for the same act. It is simply not true. Each of the crimes for which

[3] We observe that the judgment of conviction in this case, Waukesha County case No. 2016CF515, does not reflect that Glinsey was convicted as a party to the crime of identity theft. It is an inconsequential defect in the form of the judgment.

A single DNA surcharge was imposed. Because Glinsey's plea in this case was not part of the global plea agreement reached in two other cases, the issue to be addressed by the Wisconsin Supreme Court in ***Odom***, No. 2015AP2525-CR—whether the imposition of multiple DNA surcharges is "potential punishment" so that a court must advise a defendant about the surcharges before a valid plea may be taken—is not present in this case.

Glinsey was sentenced on the same day arose out of different conduct on different dates. There was no double jeopardy violation, as explained in the supplemental no-merit report.

Glinsey also suggests there is a "new factor" applicable to this case. Glinsey points to the statements by her co-defendant, Sharmaine Anderson, in which Anderson stated that she lied to police about Glinsey's involvement in the crimes and that Glinsey never profited from the crimes. Anderson's retraction of her accusations against Glinsey occurred prior to Glinsey's plea in this case. It was a fact known to Glinsey and she waived her right to raise it in defense by knowingly, intelligently, and voluntarily waiving her right to a trial.[4] As the supplemental no-merit report observes, Glinsey cannot establish that the evidence was discovered after conviction. *See* ***State v. McCallum***, 208 Wis. 2d 463, 473, 561 N.W.2d 707 (1997) (for newly discovered evidence to constitute a manifest injustice and warrant the withdrawal of a plea, the following criteria must be met by clear and convincing evidence: (1) the evidence was discovered after conviction; (2) the defendant was not negligent in seeking the evidence; (3) the evidence is material to an issue in the case; and (4) the evidence is not merely cumulative). Anderson's statements that Glinsey was not involved and did not profit from the crimes are not newly discovered evidence which would permit plea withdrawal. A change of heart motivated by a mere desire to have a trial is not enough to vacate a no contest plea, either before or after sentencing. *See* ***State v. Garcia***, 192 Wis. 2d 845, 861-62, 532 N.W.2d 111 (1995).

[4] Originally Glinsey sought to enter an ***Alford*** plea because of Sharmaine Anderson's subsequent denial of Glinsey's involvement. The trial court refused to accept an ***Alford*** plea and Glinsey changed her plea to no contest.

Finally, Glinsey indicates that she would like to pursue a postconviction motion for sentence modification. As potential grounds she recites the sexual abuse she suffered as a child, the financial desperation as a mother of three children that compelled her prior criminal activity and convictions, the abusive relationship with a man who forced her to commit the crimes for which she was sentenced, medical issues, her desire to break the cycle of abuse, and her desire to prove, via a second chance, that she can be a productive member of society and a better example to her children. Glinsey's background, medical issues, and claim that some of her crimes were forced by an abusive partner were all known to the sentencing court. Indeed, the sentencing court rejected that Glinsey could lay the blame for her criminal activity on someone else and indicated that it did not believe Glinsey would remain crime free if released without significant incarceration. The information cited by Glinsey does not present a meritorious claim for sentence modification.

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

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Bradley J. Lochowicz is relieved from further representing Nicole K. Glinsey in this appeal. *See* WIS. STAT. RULE 809.32(3).

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

Diane M. Fremgen
Clerk of Court of Appeals