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November 30, 2017

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

2016AP1917-CRNM State of Wisconsin v. Nicole Kohanski (L.C. # 2015CF2936)

Before Lundsten, P.J., Blanchard and Kloppenburg, 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).

Attorney Russell J.A. Jones has filed a no-merit report seeking to withdraw as appellate counsel for Nicole Kohanski. See WIS. STAT. RULE 809.32 (2015-16),¹ and *Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit report addresses whether there would be

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

arguable merit to a challenge to Kohanski's plea or sentence. Kohanski was sent a copy of the report, but did not respond. While conducting our independent review, we observed that though the circuit court set restitution after sentencing and entered an amended judgment reflecting its restitution order, the restitution hearing was not included in the circuit court record or addressed in counsel's no-merit report. On July 20, 2017, we required appellate counsel to request the restitution hearing transcript, ordered the record supplemented with the transcript, and directed counsel to file a supplemental no-merit report addressing restitution. The record has been supplemented accordingly, and we have received appellate counsel's supplemental no-merit report. Upon consideration of appellate counsel's original and supplemental no-merit reports and our 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.

According to the criminal complaint, Kohanski filled out and cashed a check stolen from the victim. The transaction was captured on video and Kohanski admitted that she knew the check was stolen and that she did not have the victim's consent to use the check. Kohanski was charged with uttering a forged document contrary to WIS. STAT. § 943.38(2). As part of a negotiated settlement, Kohanski pled guilty to the crime as charged and accepted responsibility for three uncharged read-in offenses alleged in the complaint. The State agreed to recommend one year in jail with restitution, and Kohanski remained free to argue her sentence. The circuit court accepted Kohanski's guilty plea and imposed, but stayed, a twelve-month jail sentence in favor of thirty months' probation with conditions to include three months of conditional jail time. Following a restitution hearing, the court ordered that Kohanski pay \$600 and entered an amended judgment reflecting that amount.

With regard to Kohanski's guilty plea, the circuit court engaged in an appropriate plea colloquy and made the necessary advisements and findings required by WIS. STAT. § 971.08(1); *State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986); and *State v. Hampton*, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. Additionally, the circuit court properly relied upon Kohanski's signed plea questionnaire, attachments, and addendum to establish her knowledge and understanding of her plea. See *State v. Hoppe*, 2009 WI 41, ¶¶30-32, 317 Wis. 2d 161, 765 N.W.2d 794; *State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). We agree with appellate counsel that no issue of arguable merit arises from the plea-taking procedures in this case.

We also agree with appellate counsel that there exists no arguably meritorious challenge to Kohanski's sentence. In fashioning the sentence, the circuit court considered the seriousness of the offense, Kohanski's character, and the need to protect the public. See *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The court determined that Kohanski's character was "mixed but with some historic tendencies towards the positive." The sentencing court weighed the facts "[t]ipping [the sentence] in favor of probation" against those "[t]ipping it in favor of incarceration," and determined that an imposed but stayed sentence with a term of probation was appropriate. See *State v. Gallion*, 2004 WI 42, ¶44, 270 Wis. 2d 535, 678 N.W.2d 197 (court should consider probation as the first alternative). Neither the probationary term nor the twelve-month stayed sentence is so excessive or unusual as to shock public sentiment. See *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Next, we agree with appellate counsel's analysis and conclusion in the supplemental no-merit report that no arguably meritorious issue arises from the circuit court's restitution order. The record shows that all parties stipulated to restitution in the amount of \$600. Kohanski is

therefore barred from challenging this aspect of her sentence on appeal. *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).

Our review of the record discloses no other potential issues for appeal.² Accordingly, this court accepts the no-merit report, affirms the judgment, and discharges appellate counsel of the obligation to further represent Kohanski in this appeal. Therefore,

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

IT IS FURTHER ORDERED that Attorney Russell J.A. Jones is relieved from further representing Nicole Kohanski 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

² Kohanski's guilty plea forfeited the right to raise nonjurisdictional defects and defenses, including claimed violations of constitutional rights. *State v. Kelty*, 2006 WI 101, ¶18 & n.11, 294 Wis. 2d 62, 716 N.W.2d 886.