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January 5, 2018

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

2016AP2084-CRNM State of Wisconsin v. Margo L. Oliver (L.C. # 2015CF160)

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

Margo Oliver appeals a judgment convicting her of second-degree reckless homicide, following entry of a no contest plea. *See* WIS. STAT. § 940.06(1) (2011-12).[1] Her appellate

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

counsel, Attorney Megan Sanders-Drazen, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and ***Anders v. California***, 386 U.S. 738 (1967). The no-merit report discusses the validity of Oliver's plea and sentence. Oliver has filed a response challenging the admissibility of her statements to law enforcement. Upon our independent review of the no-merit report, the response, and the record, we conclude that there is no arguable merit to any issue that could be raised on appeal.

The State charged Oliver with first-degree reckless homicide and delivery of schedule II narcotics in connection with the death of an individual to whom Oliver gave Fentanyl patches and Oxycodone pills. Pursuant to a negotiated plea agreement, Oliver pled no contest to one count of second-degree reckless homicide. Nothing in the record, the no-merit report, or Oliver's response discloses an arguable basis for withdrawing the plea. The court's plea colloquy, as supplemented by a plea questionnaire and waiver of rights form that she completed, informed Oliver of the elements of the offense, the penalties that could be imposed, and the constitutional rights she waived by entering a no contest plea. The court confirmed Oliver's understanding that the court was not bound by the terms of the plea agreement, *see* ***State v. Hampton***, 2004 WI 107, ¶2, 274 Wis. 2d 379, 683 N.W.2d 14, and also advised Oliver of the deportation consequences of her plea, as mandated by WIS. STAT. § 971.08(1)(c). Additionally, the court found that a sufficient factual basis existed in the criminal complaint to support the conclusion that Oliver committed the crime charged.

Oliver was receiving treatment for a mental illness at the time of the plea hearing and had taken prescribed medications consistent with her doctor's orders. The court confirmed with Oliver during the plea colloquy that there was nothing about her mental illness or the medications she was taking that caused her to have difficulty understanding the plea proceedings.

Oliver does not make any assertions to the contrary in her response to the no-merit report. Based on our independent review of the record, no-merit report, and response, we are satisfied that there would be no arguable merit to pursuing plea withdrawal.

The record also discloses no arguable basis for challenging the sentence imposed. Our review of a sentencing determination begins with a "presumption that the [circuit] court acted reasonably" and it is the defendant's burden to show "some unreasonable or unjustifiable basis in the record" in order to overturn it. *See* ***State v. Krueger***, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). The record shows that Oliver was afforded an opportunity to comment on the presentence investigation report and to address the court, both personally and through counsel. The court considered the standard sentencing factors and explained their application to this case. *See generally* ***State v. Gallion***, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. In discussing the severity of the offense, the court stated that, although Oliver was not selling her medications for profit, the fact that someone had died made the crime "an extremely serious offense." The court considered Oliver's character and criminal history, noting that she had led a crime-free life prior to this case, but also taking into consideration the fact that Oliver had had an opportunity to call for help for the victim but did not do so. In terms of the need to protect the public, the court noted that Oliver did not have a history of providing controlled substances to other individuals.

The court then imposed a sentence that was well within the permissible penalty range, imposing two years of initial confinement and four years of extended supervision, out of a total potential maximum term of imprisonment of 25 years. *See* WIS. STAT. §§ 940.06(1) (classifying second-degree reckless homicide as a Class D felony); 973.01(2)(b)4. and (d)3. (providing maximum terms of 15 years of initial confinement and 10 years of extended supervision for a

Class D felony) (2011-12). Under these circumstances, it cannot reasonably be argued that the sentence was so excessive as to shock public sentiment. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). Accordingly, any assertion that the circuit court erroneously exercised its sentencing discretion would be without arguable merit on appeal.

Finally, we turn to Oliver's assertions in the no-merit report that she was never read her rights pursuant to ***Miranda v. Arizona***, 384 U.S. 436 (1966), and that her statements to law enforcement were coerced because they were made in the presence of her boyfriend at the time, whom she feared would abuse her. The record reflects that Oliver's trial counsel filed a pretrial motion to suppress Oliver's statements to law enforcement officers. However, Oliver entered her plea before the court held a hearing or made a decision on the motion. In entering a valid plea, Oliver waived all nonjurisdictional defects and defenses. *See* ***State v. Kelty***, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886. WISCONSIN STAT. § 971.31(10) provides that an order denying a motion to suppress evidence may be reviewed upon appeal from a final judgment or order notwithstanding the fact that the judgment or order was entered upon a plea of guilty or no contest. However, in this case, no order was entered on the suppression motion. Because Oliver's suppression motion was never decided, the statute is inapplicable.

Nothing in the record, the no-merit report, or the response suggests that Oliver received ineffective assistance of trial counsel, and our independent review of the record discloses no other potential issue for appeal. Therefore,

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

IT IS FURTHER ORDERED that Attorney Megan Sanders-Drazen is relieved of any further representation of Margo Oliver in this matter. *See* WIS. STAT. RULE 809.32(3).

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

Diane M. Fremgen
Acting Clerk of Court of Appeals