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 I

February 22, 2018

To:

Hon. Dennis R. Cimpl
Children's Court Center
10201 W. Watertown Plank Rd.
Wauwatosa, WI 53226

Karen A. Loebel
Asst. District Attorney
821 W. State St.
Milwaukee, WI 53233

John Barrett
Clerk of Circuit Court
821 W. State Street, Room 114
Milwaukee, WI 53233

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

Christopher P. August
Assistant State Public Defender
735 N. Water Street, Ste. 912
Milwaukee, WI 53202-4116

Kevina Dehanette Freeman 576324
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:

2017AP965-CRNM State of Wisconsin v. Kevina Dehanette Freeman
(L.C. # 2016CF2230)

Before Brennan, P.J., Kessler and Brash, 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).

Kevina Dehanette Freeman pled no contest to two counts of first-degree recklessly endangering safety and one count of fleeing an officer resulting in damage to property, contrary to WIS. STAT. §§ 941.30(1) and 346.04(3) (2015-16).[1] She now appeals from the judgment of

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

conviction and from an order partially denying her postconviction motion. Freeman's postconviction/appellate counsel, Christopher P. August, filed a no-merit report pursuant to ***Anders v. California***, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32. Freeman filed a response. We have independently reviewed the record, the no-merit report, and the response, as mandated by ***Anders***, and we conclude that there is no issue of arguable merit that could be pursued on appeal. We therefore summarily affirm.

Freeman was pulled over for a traffic violation on the expressway. Her mother was a passenger in the vehicle. Freeman falsely identified herself to the sheriff's deputy using the identification card of her cousin and told the sheriff's deputy that she did not have a valid driver's license or insurance.[2] After the deputy determined that Freeman's mother also lacked a valid driver's license, he indicated that he would be towing the vehicle and told Freeman to remove her property. After giving Freeman time to do so, the deputy and a second deputy approached the vehicle while Freeman was seated in the driver's seat. Freeman then put the car in reverse and struck a squad car. Both deputies were thrown to the ground, into active lanes of traffic. Freeman's mother, who was standing on the roadside, was hit by the car, injuring her leg.[3] Freeman fled the scene in the vehicle.

Eventually Freeman was identified and arrested. She was charged with two counts of first-degree recklessly endangering safety by use of a dangerous weapon, one count of fleeing causing property damage, and two counts of fleeing causing bodily injury. She entered a plea

[2] Freeman's true identity was not discovered until later.

[3] One of the deputies sustained bruises and abrasions while the other suffered a leg injury that caused him to miss one month of work and perform only light duty for one additional month.

agreement with the State pursuant to which she agreed to plead no contest to the following: (1) two counts of first-degree recklessly endangering safety without the enhancer for using a dangerous weapon; and (2) one count of fleeing causing property damage.[4] The other two fleeing counts were dismissed and read in for sentencing purposes. In addition, two misdemeanors that had been pending before this incident—a charge of retail theft and a charge of carrying a concealed weapon—were also dismissed and read in for sentencing purposes. The State agreed to recommend a global sentence of six to eight years of initial confinement and five years of extended supervision.

At sentencing, the trial court considered the parties' arguments, a series of letters that were filed on Freeman's behalf by friends and family members, and two squad car video recordings of the incident. The trial court also heard from Freeman, her father, and her grandmother. For the two counts of first-degree recklessly endangering safety, the trial court sentenced Freeman to concurrent terms of seven years of initial confinement and five years of extended supervision. For the fleeing count, the trial court imposed a concurrent sentence of one year of initial confinement and one year of extended supervision. The trial court ordered Freeman to pay a single $250 DNA surcharge. It also said: "Due to the violent nature of what you did, you're not eligible for the Challenge Incarceration [P]rogram or the Substance Abuse [P]rogram."

Represented by postconviction counsel, Freeman filed a postconviction motion seeking two additional days of sentence credit and asserting that the trial court erroneously exercised its

[4] Trial counsel indicated that Freeman was entering no-contest pleas, rather than guilty pleas, for civil liability purposes.

discretion by not making Freeman eligible for the Challenge Incarceration Program or the Substance Abuse Program. The trial court granted Freeman's request for additional sentence credit but denied her request to be made eligible for the early release programs, explaining that it had chosen not to make Freeman eligible for early release because of her violent conduct, not because it believed she was statutorily ineligible for those programs.

The no-merit report addresses three issues: (1) whether Freeman's no-contest pleas were intelligently, knowingly, and voluntarily entered; (2) whether the trial court erroneously exercised its sentencing discretion; and (3) whether the trial court erroneously denied Freeman's postconviction request to be made eligible for early release programs. Counsel concludes there would be no merit to challenging Freeman's no-contest pleas or sentences. This court agrees with counsel's description and analysis of the potential issues identified in the no-merit report, and we independently conclude that there would be no arguable merit to pursuing those issues. We briefly discuss the issues below.

We begin with Freeman's no-contest pleas. There is no arguable basis to allege that they were not knowingly, intelligently, and voluntarily entered. *See* WIS. STAT. § 971.08; ***State v. Bangert***, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). Freeman completed a plea questionnaire and waiver of rights form—which the trial court referenced during the plea hearing—as well as an addendum that addressed potential defenses and motions that would be forfeited. *See* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). The jury instructions for the crimes were made a part of the record and the trial court went over with Freeman the elements of the crimes. The trial court also determined that there was a factual basis for the pleas.

The trial court conducted a thorough plea colloquy that addressed Freeman's understanding of the plea agreement and the charges to which she was pleading no contest, the penalties she faced, and the constitutional rights she was waiving by entering her pleas. *See* WIS. STAT. § 971.08; ***State v. Hampton***, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14; ***Bangert***, 131 Wis. 2d at 266-72. Based on our review of the record, we conclude that the plea questionnaire, waiver of rights form, Freeman's conversations with trial counsel, and the trial court's colloquy complied with the requirements of ***Bangert*** and ***Hampton*** for ensuring that the pleas were knowing, intelligent, and voluntary. The record does not suggest there would be an arguable basis to challenge Freeman's pleas.

Next, we consider the sentences, including the trial court's denial of Freeman's postconviction request that she be made eligible for early release programs. We conclude there would be no arguable basis to assert that the trial court erroneously exercised its sentencing discretion, *see* ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197, or that the sentences were excessive, *see* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

At sentencing, the trial court must consider the principal objectives of sentencing, including the protection of the community, the punishment and rehabilitation of the defendant, and deterrence to others, ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76, and it must determine which objective or objectives are of greatest importance, ***Gallion***, 270 Wis. 2d 535, ¶41. In seeking to fulfill the sentencing objectives, the trial court should consider a variety of factors, including the gravity of the offense, the character of the offender, and the protection of the public, and it may consider several subfactors. ***State v. Odom***, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695. The weight to be given to each factor is committed to the trial court's discretion. *See* ***Gallion***, 270 Wis. 2d 535, ¶¶41-43.

In this case, the trial court applied the standard sentencing factors and explained their application in accordance with the framework set forth in ***Gallion*** and its progeny. It addressed the nature of the crimes, noting that they were "very serious" and that the deputies and Freeman's mother could have been killed if motorists had been driving in the lane next to the stopped squad car. The trial court also discussed Freeman's character, including a prior misdemeanor conviction and the two misdemeanor cases that were pending at the time she committed the new crimes. It acknowledged that many people had written letters on Freeman's behalf. The trial court gave Freeman credit for accepting responsibility, but it noted that she had initially lied about her involvement. The trial court also discussed the public's interest in deterring people from fleeing officers, which "put[s] everyone at risk."

Our review of the sentencing transcript leads us to conclude there would be no merit to challenging the trial court's compliance with ***Gallion***. To the extent the trial court's sentencing hearing comments about the early release programs were ambiguous as to whether it believed Freeman was statutorily eligible for the programs, the postconviction order resolved any doubt. In that order, the trial court explained why it had determined that Freeman should not be made eligible for the early release programs. *See* ***State v. Fuerst***, 181 Wis. 2d 903, 915, 512 N.W.2d 243 (Ct. App. 1994) (The trial court has another opportunity to explain its sentence when challenged by postconviction motion.). We agree with appellate counsel that the trial court's explanation in its written order, coupled with its remarks at the sentencing hearing, provides sufficient evidence that the trial court properly exercised its discretion.

Further, there would be no merit to asserting that the sentences were excessive. *See* ***Ocanas***, 70 Wis. 2d at 185. Freeman's sentences, which require her to serve seven years of initial confinement and five years of extended supervision, total less than half of the maximum

sentences that could have been imposed.[5] We discern no erroneous exercise of discretion. *See* ***State v. Scaccio***, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449 ("A sentence well within the limits of the maximum sentence is unlikely to be unduly harsh or unconscionable.").

In her response to the no-merit report, Freeman asserts that the sentences were too long compared to sentences imposed on other people she knows. She also recognizes that her actions were "very wrong" and states that she is remorseful. Freeman argues that her character and background were not adequately taken into consideration at sentencing. For the reasons discussed in the no-merit report and this decision, we agree with counsel that there would be no arguable merit to challenging Freeman's sentences, which were based on the three crimes to which she pled no contest and the four crimes that were read in for sentencing purposes. The sentencing transcript and the postconviction order reflect that the trial court reviewed all of the information provided—including many letters written on Freeman's behalf—and adequately explained its reasoning.

Our independent review of the record reveals no other potential issues of arguable merit.

Upon the foregoing, therefore,

IT IS ORDERED that the judgment and order are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Christopher P. August is relieved of further representation of Freeman in this matter. *See* WIS. STAT. RULE 809.32(3).

[5] The trial court could have imposed up to eighteen years of initial confinement and thirteen years of extended supervision, as well as a $60,000 fine. No fine was imposed.

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

Sheila T. Reiff
Clerk of Court of Appeals