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DISTRICT III

June 26, 2018

To:

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

2017AP525-CRNM State of Wisconsin v. Dena L. Scalzo (L. C. No. 2015CF346)

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 Dena Scalzo filed a no-merit report concluding there is no basis to challenge Scalzo's conviction for injury by intoxicated use of a motor vehicle. Scalzo was advised of her right to respond and has failed to respond. Although not addressed in the no-merit report, our

independent review of the record revealed a potential issue regarding the circuit court's failure to personally advise Scalzo of the potential deportation consequences of her plea, as mandated by WIS. STAT. § 971.08(1)(c) (2015-16).¹ By order dated April 24, 2018, we indicated we could not ascertain from the record whether Scalzo is a United States citizen. We therefore directed counsel either to: (1) file a supplemental no-merit report addressing why there is no arguable merit to this potential issue; or (2) submit a written statement signed by Scalzo indicating she does not wish to withdraw her plea based on the circuit court's failure to personally advise her of the potential deportation consequences; or (3) file a motion for plea withdrawal in the circuit court based on the court's failure to advise Scalzo of the deportation consequences.

Counsel filed correspondence with this court indicating that during the course of his representation of Scalzo, counsel's letters "have been consistently returned, marked as 'Refused.'" Counsel further states that Scalzo "has, apparently, moved twice without advising counsel of her new address." Counsel claims he was able "to develop a possible current address for the defendant, [but] counsel's letter advising her of this court's order has been neither responded to nor refused."

In the absence of information regarding Scalzo's citizenship status, we could not say there was no arguable merit to challenge the plea. We therefore ordered counsel to identify all efforts made to contact Scalzo, including, but not limited to, any attempts to verify Scalzo's citizenship with the Department of Corrections, Scalzo's parole agent (if applicable), or Scalzo's relatives.

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

Counsel has now filed correspondence stating as follows:

Counsel is in receipt of the Court's Order of May 14, 2018 regarding the above case. Counsel's letters to the defendant's possible address have been returned marked "attempted not known." Counsel's letter to the defendant's mother at the address included in the pre-sentence report has not been answered. The pre-sentence report indicates that the addresses of the defendant's siblings are not known. The defendant's probation agent has advised that Probation has "no additional information to provide" ... "on this subject."

Counsel is therefore unable to advise the Court of the defendant's citizenship status or her desire in this matter.

By our prior order of April 24, 2018, we concluded the no-merit report had properly analyzed the issues it raised with one exception: the potential issue concerning the circuit court's failure to advise Scalzo of the deportation consequences mandated by WIS. STAT. § 971.08(1)(c). In the absence of information regarding her citizenship status, we cannot say there is no arguable merit to challenge the plea on that basis. Accordingly, we will reject the no-merit report, dismiss the appeal, and direct counsel to file a postconviction motion. If Scalzo's input is necessary to pursue the postconviction motion, and she has not apprised counsel or the court of her whereabouts, counsel may consider moving the circuit court to dismiss the matter and relieve counsel of further representation. *See, e.g., State v. Bono*, 103 Wis. 2d 654, 655, 309 N.W.2d 400 (Ct. App. 1981).

Therefore,

IT IS ORDERED that the no-merit report is rejected and the appeal is dismissed.

IT IS FURTHER ORDERED that the time for filing a postconviction motion is extended to July 30, 2018.

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

Sheila T. Reiff
Clerk of Court of Appeals