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DISTRICT II

July 25, 2018

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Beauty B. Wadlington
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You are hereby notified that the Court has entered the following opinion and order:

2017AP1073-CRNM State of Wisconsin v. Beauty B. Wadlington (L.C. # 2016CM409)

Before Hagedorn, J.¹

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).

Beauty B. Wadlington appeals from a judgment of conviction entered upon her guilty plea to one count of misdemeanor battery. The judgment was entered after a sentencing hearing

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

following the revocation of Wadlington's deferred prosecution agreement. Wadlington's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32, and *Anders v. California*, 386 U.S. 738 (1967). Wadlington was advised of her right to file a response and has elected not to do so. Upon consideration of the no-merit report 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.

Wadlington was originally charged with one count each of disorderly conduct and battery after she whipped one of her minor children with an extension cord. To resolve the matter, Wadlington agreed to plead guilty to the battery charge and to enter into a deferred prosecution agreement (DPA). The court would withhold entry of judgment and dismiss the charge if, after twelve months, Wadlington complied with all terms of the DPA. The circuit court conducted a plea colloquy, found that Wadlington's guilty plea was knowing, intelligent and voluntary, dismissed the disorderly conduct charge, and set the matter out for one year. The court conducted a separate colloquy with Wadlington to ensure she understood the terms of the DPA and consequences of its revocation. Wadlington confirmed her understanding of the following provision:

If the defendant is charged with an offense for which a court finds probable cause to believe that a crime was committed by the defendant, this agreement shall be revoked forthwith and the matter will proceed to sentencing.

Less than two months later, the State filed a motion for immediate sentencing, alleging that Wadlington had violated the terms of her DPA by being charged with disorderly conduct in a new Washington County case, No. 2016CM569, in which the circuit court made a probable cause finding. The court in the instant case held a hearing at which it found cause to revoke the

DPA and entered judgment on Wadlington's guilty plea to the battery charge. At sentencing, the circuit court imposed but stayed a six-month jail sentence in favor of twelve months of probation. Wadlington appeals.

The no-merit report addresses the potential issues of whether Wadlington's plea was knowingly, intelligently and voluntarily entered, whether the circuit court properly exercised its discretion in revoking Wadlington's DPA, and whether the sentence was the result of an erroneous exercise of discretion, or unduly harsh or excessive. Having independently reviewed the record, we agree with the no-merit report's analysis and conclusion that these potential issues do not give rise to an issue of arguable merit.² Further, our independent review reveals no other potential issues of arguable merit. Therefore,

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

IT IS FURTHER ORDERED that Attorney Gregory Bates is relieved from further representing Beauty B. Wadlington in this matter. *See* WIS. STAT. RULE 809.32(3).

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

Sheila T. Reiff
Clerk of Court of Appeals

² The circuit court's colloquy did not contain the deportation warning required by WIS. STAT. § 971.08(1)(c). Counsel's no-merit report does not address this defect. However, there is no suggestion in the record that Wadlington's plea is likely to result in her deportation or other immigration consequences. *See* § 971.08(2). Further, it appears that Wadlington has successfully completed her probation and remains out of custody; this supports a determination that the failure to give the deportation warning does not provide grounds for plea withdrawal in Wadlington's case. In the event appellate counsel or Wadlington believes that the circuit court's failure to provide the deportation warning presents an arguably meritorious issue in Wadlington's case (*i.e.*, if she is not a United States citizen), we will entertain a motion to reconsider.