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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  
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**DISTRICT IV**

August 1, 2018

To:

Hon. Clayton Patrick Kawski  
Circuit Court Judge  
Dane County Courthouse  
215 South Hamilton  
Madison, WI 53703

Carlo Esqueda  
Clerk of Circuit Court  
Dane County Courthouse  
215 S. Hamilton St., Rm. 1000  
Madison, WI 53703

Adrienne E. Blais  
Asst. District Attorney  
215 S. Hamilton St., Room 3000  
Madison, WI 53703

Jefren E. Olsen  
Asst. State Public Defender  
P.O. Box 7862  
Madison, WI 53707-7862

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

Brandy S. McClernan  
2612 Pheasant Ridge Trail, Apt 2  
Madison, WI 53713

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

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2017AP1018-CRNM      State of Wisconsin v. Brandy S. McClernan (L.C. # 2014CF1486)

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).**

Attorney Jefren E. Olsen, appointed counsel for Brandy S. McClernan, has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2015-16)<sup>1</sup> and *Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit report addresses whether

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

there would be arguable merit to a challenge to the circuit court's orders denying McClernan's suppression motions, or to McClernan's plea or sentencing. McClernan was sent a copy of the report, but has not filed a response. Upon independently reviewing the entire record, as well as the no-merit report, we agree with counsel's assessment that there are no arguably meritorious appellate issues.

McClernan was charged with possession of more than 10 grams but less than 50 grams of the controlled substance MDMA with intent to deliver, possession of 200 grams or less of the controlled substance THC with intent to deliver, and maintaining a drug trafficking place. Pursuant to a plea agreement, McClernan pled guilty to an amended charge of possession of three grams or less of the controlled substance MDMA with intent to deliver, the remaining charges were dismissed and read in for sentencing, and the parties jointly recommended that the court withhold sentence and impose three years of probation. The court followed the parties' joint sentencing recommendation.

First, the no-merit report addresses whether there would be arguable merit to a challenge to the circuit court orders denying McClernan's suppression motions. We agree with counsel's analysis that any challenge to the circuit court's decisions would be wholly frivolous.

Next, the no-merit report addresses whether there would be arguable merit to a challenge to McClernan's plea. A post-sentencing motion for plea withdrawal must establish that plea withdrawal is necessary to correct a manifest injustice, such as a plea that was not knowing, intelligent, and voluntary. See *State v. Brown*, 2006 WI 100, ¶18, 293 Wis. 2d 594, 716 N.W.2d 906. Here, the circuit court conducted a plea colloquy that, together with the plea questionnaire that McClernan signed, satisfied the court's mandatory duties to personally address McClernan

and determine information such as McClernan's understanding of the nature of the charge and the range of punishments she faced, the constitutional rights she waived by entering a plea, and the direct consequences of the plea. *See State v. Hoppe*, 2009 WI 41, ¶¶18, 30, 317 Wis. 2d 161, 765 N.W.2d 794. There is no indication of any other basis for plea withdrawal. Accordingly, we agree with counsel's assessment that a challenge to McClernan's plea would lack arguable merit.

Finally, the no-merit report addresses whether there would be arguable merit to a challenge to McClernan's sentence. We agree with counsel that this issue lacks arguable merit. Because McClernan received the sentence she affirmatively approved, she is barred from challenging the sentence on appeal. *See State v. Scherreiks*, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989). We discern no other basis for challenging the sentence imposed by the circuit court.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

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

IT IS FURTHER ORDERED that Attorney Jefren E. Olsen is relieved of any further representation of Brandy S. McClernan in this matter. *See* WIS. STAT. RULE 809.32(3).

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

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*