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September 5, 2018

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

2017AP1387-CRNM State of Wisconsin v. Jodeen J. Cooklin (L.C. #2016CM50)
2017AP1388-CRNM State of Wisconsin v. Jodeen J. Cooklin (L.C. #2016CM126)

Before Gundrum, 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).

Jodeen J. Cooklin appeals from judgments of conviction entered after she pled no contest to knowingly violating a domestic abuse injunction on two separate occasions. *See* WIS. STAT.

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

§ 813.12(8)(a). Her appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and ***Anders v. California***, 386 U.S. 738 (1967). Cooklin received a copy of the report, was advised of her right to file a response, and has elected not to do so. Upon consideration of the report and an independent review of the records, the judgments are summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

Cooklin's estranged husband obtained a domestic abuse injunction prohibiting Cooklin from contacting him. Cooklin sent him messages via Facebook and was charged with violating a domestic abuse injunction on two separate occasions. Cooklin entered a no contest plea in both cases. The plea agreement provided for the dismissal and read in of charges in two other cases, including a felony charge, and a joint sentencing recommendation of eighteen months' probation with thirty days' conditional jail time in one case to be stayed. Cooklin was sentenced to concurrent terms of eighteen months' probation, with thirty days of conditional jail time on both

convictions with all but two days stayed.[2] Each judgment of conviction reflects a $200 DNA surcharge.[3]

The no-merit report addresses the potential issues of whether the plea colloquy was legally sufficient to establish that Cooklin's plea was freely, voluntarily, and knowingly entered, whether any manifest injustice exists to support a motion for plea withdrawal, whether ineffective assistance of trial counsel might provide a basis for plea withdrawal, and whether the sentence was the result of an erroneous exercise of discretion or otherwise subject to modification based on any new factor. This court is satisfied that the no-merit report properly analyzes the issues it raises as without merit, and this court will not discuss them further.

The no-merit report does not discuss that an examination was ordered to see if Cooklin could pursue a plea of not guilty by reason of mental disease or defect (NGI). Apparently the examination was never completed as the record does not include any report. Cooklin never

[2] The judgments of conviction do not state that the terms of probation are concurrent. The omission is of no consequence. The record reflects that Cooklin's probation was revoked and she was subsequently sentenced to two consecutive five-month jail terms. The sentencing after revocation is not before the court in these appeals.

[3] A mandatory DNA surcharge was assessed on each judgment of conviction. Because of the multiple DNA surcharges, we previously put these appeals on hold pending the Wisconsin Supreme Court's decision in ***State v. Odom***, No. 2015AP2525-CR, which was expected to address whether a defendant could withdraw a plea because the defendant was not advised at the time of his plea that multiple mandatory DNA surcharges would be assessed. The ***Odom*** appeal was voluntarily dismissed before oral argument in the Supreme Court. These cases were then held for a decision in ***State v. Freiboth***, 2018 WI App 46, __ Wis. 2d __, __ N.W.2d __ (2015AP2535). ***Freiboth*** holds that a plea hearing court does not have a duty to inform the defendant about the mandatory DNA surcharge because the surcharge is not punishment and is not a direct consequence of the plea. ***Id.***, ¶12. Consequently, there is no arguable merit to a claim for plea withdrawal based on the assessment of mandatory DNA surcharges.

affirmatively entered a NGI plea. Even if she had, abandonment of the potential plea does not give rise to any potential issue of arguable merit. A personal colloquy is not necessary as a prerequisite to a valid withdrawal of an NGI defense. ***State v. Francis***, 2005 WI App 161, ¶26, 285 Wis. 2d 451, 701 N.W.2d 632. Further, the defendant's entry of a guilty plea is fundamentally inconsistent with an NGI defense and implicitly withdraws the NGI defense. ***Id.***

In reciting the plea agreement at the plea hearing, the prosecutor stated that two of the agreed upon probation conditions were that Cooklin be ordered not to participate in social media and that a psychological evaluation be required. In response, defense counsel indicated that Cooklin would ask that use of social media be ordered to be at the agent's discretion and that the question of whether a psychological evaluation be required be left up to the court. The prosecutor did not object to the difference in the stated agreement. The lack of an exact agreement on these two proposed conditions of the probation did not render the plea agreement infirm. Indeed, Cooklin was permitted to argue during sentencing that the social media and psychological evaluation requirements be discretionary. The plea agreement was construed to Cooklin's advantage.

We have also considered whether there is any arguable merit to a claim that the prosecution breached the plea agreement when it informed the sentencing court of the victims' desire that Cooklin be required to serve more than thirty days in jail. This was not an end-run around the prosecution's agreement to recommend that thirty days of jail time be stayed. The prosecutor made it clear he was conveying the thoughts of the victims. After doing so, the prosecutor explained to the court why he did not recommend any jail time up front on the convictions. No arguable meritorious issue exists.

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the convictions and discharges appellate counsel of the obligation to represent Cooklin further in these appeals.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Daniel R. Googin II is relieved from further representing Jodeen J. Cooklin in these appeals. *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