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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:

2017AP638-CRNM State of Wisconsin v. Nicole K. Glinsey (L.C. #2014CF1209)
2017AP639-CRNM State of Wisconsin v. Nicole K. Glinsey (L.C. #2014CF1323)

Before Reilly, P.J., Gundrum and Hagedorn, 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).

Nicole K. Glinsey appeals from judgments of conviction for obtaining a controlled substance by fraud and for being a party to the crime of identity theft. Her appellate counsel, Attorney Bradley J. Lochowicz, has filed no-merit reports pursuant to WIS. STAT. RULE 809.32

(2015-16),[1] and ***Anders v. California***, 386 U.S. 738 (1967). Glinsey filed a response to the no-merit reports and counsel then filed supplemental no-merit reports.[2] RULE 809.32(1)(e), (f). Upon consideration of these submissions 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.

As the result of a task force investigation into a prescription fraud ring, Glinsey was charged with having obtained oxycodone by a forged prescription at a Menomonee Falls Walgreens on February 20, 2014. In the second case appealed, Glinsey was charged as a repeater with being a party to the crimes of misdemeanor theft and identity theft after she stole a wallet from a teacher's purse at St. Mary's Catholic School in Elm Grove on October 31, 2014, and then used a credit card from the wallet at three stores. Glinsey's presence at the school and several stores was captured on video surveillance.

On January 7, 2016, under a global plea agreement, Glinsey entered a guilty plea to procuring a controlled substance by fraud and a no-contest plea to being a party to the crime of identity theft without the repeater allegation. The misdemeanor theft charge and bail jumping charge in another case were dismissed as read-ins at sentencing; a bail jumping charge against Glinsey in another case was dismissed outright. The prosecution agreed to make the same sentencing recommendation as that made in the presentence investigation report (PSI). The

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

[2] Appointed counsel did not move to consolidate these appeals despite that they were handled together for plea and sentencing. *See* WIS. STAT. RULE 809.10(3). Rather, counsel filed two separate no-merit reports and two separate supplemental no-merit reports which are duplicative and a waste of paper and effort. We consolidated the appeals by a November 20, 2017 order.

prosecution complied with the plea agreement at sentencing. On the controlled substance conviction, Glinsey was sentenced to three years' initial confinement and three years' extended supervision. The same sentence was imposed on the identity theft conviction. The sentences were ordered to be served consecutively. The sentencing court also ordered Glinsey not eligible for the Challenge Incarceration Program (CIP) and Substance Abuse Program (SAP).[3]

The no-merit reports address the potential issues of whether Glinsey's pleas were freely, voluntarily, and knowingly entered, and whether the sentences, including the order that Glinsey was not eligible for CIP or SAP, were the result of an erroneous exercise of discretion or unduly harsh. The plea hearing fully conformed to the strictures of ***State v. Bangert***, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986), and the trial court engaged in an appropriate colloquy and made the necessary advisements and findings required by WIS. STAT. § 971.08(1), ***Bangert***, and ***State v. Hampton***, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. In fashioning the sentences, the circuit court discussed the relevant sentencing factors and objectives. It applied them in a reasoned and reasonable manner in assessing Glinsey's personal characteristics, the nature of the offenses, that she committed more crimes while on bail after entering pleas in these cases, and the need to protect the community from her repeated conduct. Although the maximum sentences were imposed, the sentencing court's reasons for the sentences negate any suggestion that

[3] Glinsey's pleas to multiple counts resulted in the assessment of multiple mandatory DNA surcharges totaling $500, and that potential financial obligation was not addressed during the plea colloquy. We previously placed these appeals on hold awaiting 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 appeals were then held for a decision in ***State v. Freiboth***, 2018 WI App 46, ___Wis. 2d ___, ___ N.W.2d ___ (No. 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.

imposition of the maximums was excessive or unusual so as to shock public sentiment. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We agree with the assessment that no issues of arguable merit arise from either the plea taking or sentencing.

In her response to the no-merit report, Glinsey first suggests that she received multiple punishments for the same act. It is simply not true. Each of the crimes for which Glinsey was sentenced on the same day arose out of different conduct on different dates. There was no double jeopardy violation, as explained in the supplemental no-merit report.

Glinsey also suggests there is a "new factor" that should permit her to withdraw her pleas. Glinsey points to the statements by Sharmane Anderson, a co-defendant of Glinsey's in another identity theft case, in which Anderson stated that she lied to police about Glinsey's involvement in certain crimes, that Glinsey never profited from the crimes, and that Glinsey did not know certain items were stolen. Anderson's retraction of her accusations against Glinsey do not relate to Glinsey's use of a forged prescription or a credit card in the name of another person. As the supplemental no-merit report observes, for newly discovered evidence to constitute a manifest injustice and warrant the withdrawal of a plea, the following criteria must be met by clear and convincing evidence: (1) the evidence was discovered after conviction; (2) the defendant was not negligent in seeking the evidence; (3) the evidence is material to an issue in the case; and (4) the evidence is not merely cumulative. ***State v. McCallum***, 208 Wis. 2d 463, 473, 561 N.W.2d 707 (1997). Glinsey cannot establish that Anderson's statements that Glinsey was not involved and did not profit from the crimes are material to an issue in these cases. Anderson's statements are not newly discovered evidence which would permit plea withdrawal.

Finally, Glinsey indicates that she would like to pursue a postconviction motion for sentence modification. As potential grounds she recites the sexual abuse she suffered as a child, the financial desperation as a mother of three children that compelled her prior criminal activity and convictions, the abusive relationship with a man who forced her to commit the crimes for which she was sentenced, medical issues, her desire to break the cycle of abuse, and her desire to prove, via a second chance, that she can be a productive member of society and a better example to her children. Glinsey's background, medical issues, and claim that some of her crimes were forced by an abusive partner were all known to the sentencing court. Indeed, the sentencing court rejected that Glinsey could lay the blame for her criminal activity on someone else and indicated that it did not believe Glinsey would remain crime free if released without significant incarceration. The information cited by Glinsey does not present a meritorious claim for sentence modification.

Our review of the records discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit reports, affirms the convictions, and discharges appellate counsel of the obligation to represent Glinsey 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 Bradley J. Lochowicz is relieved from further representing Nicole K. Glinsey 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