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**DISTRICT II/IV**

September 4, 2018

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

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2016AP2302-CRNM      State of Wisconsin v. Shannon J. O'Connor (L.C. # 2014CF282)

Before Lundsten, P.J., Sherman 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 Christina Starner, appointed counsel for Shannon O'Connor, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2015-16)<sup>1</sup> and *Anders v. California*, 386 U.S. 738 (1967). We conclude that this case is appropriate for summary disposition. See WIS. STAT. RULE 809.21. After our independent review of the record, we conclude there is no arguable merit to any issue that could be raised on appeal.

O'Connor pled no contest to false imprisonment, battery, disorderly conduct, and two counts of misdemeanor bail jumping. The court imposed a prison term of three years and nine months of initial confinement and three years of extended supervision, with consecutive probation.

The no-merit report addresses whether O'Connor's pleas were entered knowingly, voluntarily, and intelligently. The plea colloquy sufficiently complied with the requirements of *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906, and WIS. STAT. § 971.08 relating to the nature of the charge, the rights O'Connor was waiving, and other matters. The record shows no other ground to withdraw the pleas. There is no arguable merit to this issue.

The no-merit report addresses whether trial counsel was ineffective by revealing, as part of a motion to withdraw from representation, that O'Connor had left "veiled threatening" messages on her voice mail, such as demanding that she call him "or else." We agree with the no-merit report that, even if revealing this conduct was deficient performance because it was not necessary to include in the withdrawal motion, there is no indication of possible prejudice to O'Connor from the court having this information.

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

The no-merit report addresses whether the circuit court erred in telling O'Connor, after it granted the above withdrawal motion, that it would grant only one request for withdrawal of counsel. The report characterizes this as a "premature decision."

We are unable to see any legal theory that could lead to relief on these facts. The court's statement was not a decision in the normal sense of the term because it was not binding in the future. The court remained free to grant such a request later, if it chose to. The only potential harm to O'Connor might be found in an argument that the court's statement deterred him from seeking another withdrawal at some later time. However, we have not been given any information that would support such an argument.

The no-merit report addresses whether the court erroneously exercised its sentencing discretion. The standards for the circuit court and this court on sentencing issues are well-established and need not be repeated here. *See State v. Gallion*, 2004 WI 42, ¶¶17-51, 270 Wis.2d 535, 678 N.W.2d 197. In this case, the court considered appropriate factors, did not consider improper factors, and reached a reasonable result. There is no arguable merit to this issue.

Five mandatory DNA surcharges were assessed on the judgments of conviction. Because of the multiple DNA surcharges, we previously put this appeal on hold pending the Wisconsin Supreme Court's decision in *State v. Odom*, appeal No. 2015AP2525-CR, which was expected to address whether the imposition of multiple DNA surcharges constitutes "potential punishment" under WIS. STAT. § 971.08(1)(a), so that a defendant must be advised about the surcharges during the plea colloquy. The *Odom* appeal was voluntarily dismissed before oral argument. This case was 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. Accordingly, there is no arguable merit to a claim for plea withdrawal based on the assessment of mandatory DNA surcharges.

In one of O'Connor's responses to the no-merit report, he suggests that a head injury he experienced and possible post-traumatic stress disorder might be a new factor justifying modification of his sentence. We ordered his attorney to address this point. Counsel then filed a supplemental no-merit report that included a report from an expert who had been retained to evaluate O'Connor for this purpose. The expert concluded that O'Connor did not have post-traumatic stress disorder, but does "struggle with social anxiety and variable mood." Based on that report, counsel concluded that there is no arguable merit to a motion for sentence modification.

In a reply to the supplemental no-merit report, O'Connor states that he does not accept that expert's conclusions. However, he does not provide a convincing explanation of what is wrong with the conclusions. O'Connor also asserts that he has a right to a second opinion. However, he does not cite any legal authority for that proposition, and we are not aware of any. We agree with counsel's conclusion that it would be frivolous to move for sentence modification based on the expert's report.

In his responses to the no-merit report, O'Connor also asserts that the circuit court vacated the plea agreement. It is not clear what O'Connor is referring to. The plea agreement appears to have been implemented as agreed to.

Our review of the record discloses no other potential issues for appeal.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Starner is relieved of further representation of O'Connor 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*