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DISTRICT II

September 19, 2018

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

2017AP542-CRNM	State of Wisconsin v. Shauntia A. Graham (L.C. #2015CF655)
2017AP543-CRNM	State of Wisconsin v. Shauntia A. Graham (L.C. #2016CF28)
2017AP544-CRNM	State of Wisconsin v. Shauntia A. Graham (L.C. #2016CM345)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

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).

Shauntia A. Graham appeals from judgments convicting her of armed robbery as party to a crime (PTAC), battery by prisoner, and disorderly conduct. This court granted appointed appellate counsel's motion to consolidate the three appeals for purposes of briefing and disposition. Appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32

(2015-16)[1] and ***Anders v. California***, 386 U.S. 738 (1967). Graham was advised of her right to file a response but has elected not to do so. Upon consideration of the no-merit report and an independent review of the records as mandated by ***Anders*** and RULE 809.32, we conclude there are no issues with arguable merit for appeal and therefore summarily affirm the judgments. *See* WIS. STAT. RULE 809.21.

Graham entered an ***Alford***[2] plea to PTAC armed robbery of an eighty-six-year-old victim. She also entered no-contest pleas to battery by a prisoner and misdemeanor disorderly conduct for incidents occurring during her presentence incarceration. Charges of aggravated battery of an elderly person, battery, theft (<=$2500), PTAC aggravated battery of an elderly person, and two additional misdemeanor disorderly conduct counts were dismissed and read in. The court sentenced Graham to seven years' initial confinement (IC) and eight years' extended supervision (ES) on the armed robbery conviction and one year IC plus one year ES on each of the other two convictions, concurrent with the lengthier sentence. This no-merit appeal followed.

The no-merit report considers whether Grahams' ***Alford*** and no-contest pleas were knowing, voluntary, intelligent, and supported by a sufficient factual basis, whether she received the effective assistance of counsel, and whether her sentence was the product of a proper exercise of discretion. We agree with counsel that no nonfrivolous argument could be made in a challenge to any of those issues.

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

[2] ***North Carolina v. Alford***, 400 U.S. 25 (1970).

Graham contended she was present but had no active role in the armed robbery. An ***Alford*** plea is a guilty plea accompanied by protestations of innocence; it constitutes only a waiver of trial but not an admission of guilt. ***State v. Johnson***, 105 Wis. 2d 657, 661, 314 N.W.2d 897 (Ct. App. 1981). "[A]n express admission of guilt … is not a constitutional requisite to the imposition of criminal penalty." ***Id.*** One accused of a crime may voluntarily, knowingly, and understandingly consent to the imposition of a prison sentence even if unwilling or unable to admit to participating in the crime. ***Id.*** "[T]he ***Alford*** plea gives the defendant a valuable option." ***State v. Garcia***, 192 Wis. 2d 845, 857, 532 N.W.2d 111 (1995). Graham acknowledged that she entered her ***Alford*** plea for strategic reasons, i.e., as a way to resolve many of the other charges.

The trial court engaged Graham in a colloquy that demonstrated that she understood the ***Alford*** plea and its consequences, entered the plea voluntarily, and was not subject to threats or promises. The court was satisfied that the State's evidence showed strong proof of guilt. *See* ***Johnson***, 105 Wis. 2d at 663. The court also found that a sufficient factual basis existed for each element of the crimes to which she pled, that Graham understood the elements and her constitutional rights, and that she waived those rights freely, knowingly, and intelligently. No issue of arguable merit could arise.

The report also considers whether Graham's counsel rendered effective assistance. Our review of the record satisfies us that Graham could not prove that counsel's performance was deficient and that any alleged deficient performance prejudiced her defense. ***Strickland v. Washington***, 466 U.S. 668, 687-88 (1984). Appellate counsel has properly analyzed the issue

and correctly concluded that it would be frivolous to raise a postconviction claim of ineffective assistance of counsel. We therefore discuss it no further.

After sentence was pronounced, Graham told the court the imposition of a total fifteen-year sentence was "extremely harsh and brutal." Graham noted that the sentence was longer than her co-actor's ten-year sentence, who she claimed was more culpable, and longer than that recommended by the prosecutor.

The court considered the primary sentencing factors—the gravity of the offense, the character of the defendant, and the need to protect the public. ***State v. Davis***, 2005 WI App 98, ¶13, 281 Wis. 2d 118, 698 N.W.2d 823. As was its right, the court gave greatest weight to the gravity of the offense due to the violence against an elderly victim, and Graham's need for rehabilitation, especially anger management. *See* ***id.*** The court also explained how, on these facts, the sentence advanced the objectives of protection of the community and punishment and rehabilitation of Graham. *See* ***State v. Gallion***, 2004 WI 42, ¶¶40-42, 270 Wis. 2d 535, 678 N.W.2d 197.

The sentence imposed was well within the forty years Graham faced on the armed robbery alone, and does not shock the public sentiment or violate the judgment of reasonable people concerning what is right and proper under the circumstances. *See* ***State v. Daniels***, 117 Wis. 2d 9, 22, 343 N.W.2d 411 (Ct. App. 1983). "A mere disparity between the sentences of co-defendants is not improper if the individual sentences are based upon individual culpability and the need for rehabilitation." ***State v. Toliver***, 187 Wis. 2d 346, 362, 523 N.W.2d 113 (Ct. App. 1994). Nothing in the record suggests that the disparity was in any way arbitrary or based on

irrelevant considerations. *See* ***State v. Perez***, 170 Wis. 2d 130, 144, 487 N.W.2d 630 (Ct. App. 1992). A challenge to the sentence would be frivolous.

Our independent review of the record discloses no other potentially meritorious issue for appeal.[3] Accordingly, this court accepts the no-merit report, affirms the convictions, and discharges appellate counsel of the obligation to represent Graham further in this 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 Roberta A. Heckes is relieved from further representing Graham in this appeal. *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

[3] Three mandatory DNA surcharges were assessed on the judgments of conviction. Because of the multiple DNA surcharges, we put these appeals on hold pending the Wisconsin Supreme Court's decision in ***State v. Odom***, No. 2015AP2525-CR. ***Odom*** was expected to address whether a defendant could withdraw a plea because the defendant was not advised at the time of his or her plea that multiple mandatory DNA surcharges would be assessed, but the ***Odom*** appeal was voluntarily dismissed before oral argument. These cases then were held for a decision in ***State v. Freiboth***, 2018 WI App 46, __ Wis. 2d __, __ N.W.2d __. ***Freiboth*** holds that a plea hearing court does not have a duty to inform the defendant about the mandatory DNA surcharge, as the surcharge is neither punishment nor 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.