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**DISTRICT I**

October 4, 2018

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

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2017AP2180-CRNM      State of Wisconsin v. Tequila L. Cole (L.C. # 2014CF005599)

Before Brennan, Brash and Dugan, 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).**

Tequila L. Cole appeals from a judgment of conviction for one count of first-degree reckless homicide by use of a dangerous weapon, contrary to WIS. STAT. §§ 940.02(1) and 939.63(1)(b) (2013-14).<sup>1</sup> Cole's appellate counsel, Bradley J. Lochowicz, has filed a no-merit

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

report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Cole has not filed a response. We have independently reviewed the record and the no-merit report as mandated by *Anders*. We conclude that there is no issue of arguable merit that could be pursued on appeal. We summarily affirm the judgment.

The criminal complaint charged Cole with one count of first-degree intentional homicide by use of a dangerous weapon in connection with the shooting death of a woman named Alonna Thomas. The complaint alleged that Cole and Thomas knew each other and had a conflict they planned to address by fighting at a specific location. On December 9, 2014, they both arrived in cars driven by other people and exited their respective vehicles. Cole pulled out a semi-automatic handgun and began firing. One bullet struck Thomas, who later died of her injuries. Cole fled the scene and did not turn herself in to law enforcement authorities until May 30, 2016.

Cole entered a plea agreement with the State pursuant to which she agreed to plead guilty to a reduced charge of first-degree reckless homicide by use of a dangerous weapon. At the plea hearing, the State said that it had agreed to recommend “a lengthy period of confinement” in prison but would leave the specific length of initial confinement and extended supervision to the trial court’s discretion. The State said that under the terms of the agreement, the defense was “free to argue for whatever sentence they deem appropriate,” and the family members of the victim were also “free to address the court and recommend whatever they wish to recommend; for example, a specific number of years as to either portion of the sentence.”

The trial court conducted a plea colloquy with Cole, accepted Cole's guilty plea, and found her guilty.<sup>2</sup> At sentencing, the trial court heard argument from the parties, as well as statements by the relatives of both Cole and the victim. The trial court ultimately sentenced Cole—who was facing up to forty-five years of initial confinement and fifteen years of extended supervision—to thirty years of initial confinement and ten years of extended supervision. The court ordered Cole, a first-time felon, to pay applicable costs and surcharges, which included a mandatory \$250 DNA surcharge. The trial court also ordered Cole to pay \$6201.21 in restitution.<sup>3</sup> Finally the trial court stated that “due to the type of offense that we have here,” Cole was not eligible for two early release programs: the Wisconsin Substance Abuse Program and the Challenge Incarceration Program.<sup>4</sup>

The no-merit report analyzes four issues: (1) the proper standard of review for evaluating a sentencing decision; (2) whether the trial court erroneously exercised its sentencing discretion; (3) whether the plea colloquy was sufficient and whether there is a basis to seek plea withdrawal; and (4) whether Cole should have been found eligible for early release programs. This court agrees with appellate counsel's description and analysis of the potential issues identified in the no-merit report, and we independently conclude that pursuing those issues would lack arguable merit. We will briefly discuss Cole's guilty plea and sentence.

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<sup>2</sup> At the conclusion of the plea hearing, the trial court asked Cole about correspondence she sent the trial court expressing concerns about her case. The trial court said: “I'm assuming any issues or concerns that you're having in that letter ... have all been taken care of.” Cole replied: “Yes, sir.”

<sup>3</sup> At sentencing, trial counsel explicitly stated that the defense had “[n]o objections” to the restitution requested, which included costs associated with the victim's burial.

We begin with Cole's plea. There is no arguable basis to allege that Cole's guilty plea was not knowingly, intelligently, and voluntarily entered. See WIS. STAT. § 971.08; *State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). She completed a plea questionnaire and waiver of rights form, which the trial court referenced during the plea hearing as it went through the rights Cole was giving up. See *State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). Cole also signed an addendum to the plea questionnaire indicating that she was giving up additional rights and defenses. When asked, trial counsel indicated that he had gone over the questionnaire with Cole and was satisfied that Cole understood the rights she was giving up, the elements of the crime, and the maximum penalties.

The trial court referenced the jury instructions when discussing the crime of first-degree reckless homicide, and it explained the penalty enhancer to Cole. The trial court also stated the maximum penalty for the crime, and it confirmed Cole understood that the trial court did not "have to follow anyone's recommendations" and could impose the maximum penalty.

The transcript and the plea hearing documents demonstrate that the trial court conducted a thorough plea colloquy that addressed the charge to which Cole was pleading guilty, the penalties she faced, and the constitutional rights she was waiving by entering her plea. See WIS. STAT. § 971.08; *State v. Hampton*, 2004 WI 107, ¶¶20-24, 38, 274 Wis. 2d 379, 683 N.W.2d 14; *Bangert*, 131 Wis. 2d at 266-72. We conclude that the plea questionnaire, waiver of rights form, Cole's conversations with her trial counsel, and the trial court's plea colloquy appropriately

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<sup>4</sup> As the no-merit report explains, Cole was statutorily ineligible for those early-release programs because her conviction was for a crime found in WIS. STAT. ch. 940. See WIS. STAT. § 973.01(3g) and (3m).

advised Cole of the elements of the crime and otherwise complied with the requirements of *Bangert* and *Hampton* for ensuring that her plea was knowing, intelligent, and voluntary. The record does not suggest there would be an arguable basis to challenge Cole's guilty plea.

Next, we turn to the sentencing. We conclude that there would be no arguable basis to assert that the trial court erroneously exercised its sentencing discretion, *see State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197, or that the sentence was excessive, *see Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

At sentencing, the trial court must consider the principal objectives of sentencing, including the protection of the community, the punishment and rehabilitation of the defendant, and deterrence to others, *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76, and it must determine which objective or objectives are of greatest importance, *Gallion*, 270 Wis. 2d 535, ¶41. In seeking to fulfill the sentencing objectives, the trial court should consider a variety of factors, including the gravity of the offense, the character of the offender, and the protection of the public, and it may consider additional factors. *See State v. Odom*, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695. The weight to be given to each factor is committed to the trial court's discretion. *See Gallion*, 270 Wis. 2d 535, ¶43.

In this case, the trial court applied the standard sentencing factors and explained their application in accordance with the framework set forth in *Gallion* and its progeny. It offered lengthy sentencing remarks that discussed numerous factors, including Cole's lack of a criminal

history, the seriousness of the crime, the fact that Cole was “in hiding” for over fifteen months after committing the crime, and the need to punish Cole for her actions.<sup>5</sup>

Our review of the sentencing transcript leads us to conclude that there would be no merit to challenge the trial court’s compliance with *Gallion*. Further, there would be no merit to assert that the sentence was excessive. See *Ocanas*, 70 Wis. 2d at 185. As noted, Cole was facing a maximum penalty of forty-five years of initial confinement and fifteen years of extended supervision. Cole’s sentence of thirty years of initial confinement and ten years of extended supervision is well within the maximum sentence, and we discern no erroneous exercise of discretion. See *State v. Scaccio*, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449 (“A sentence well within the limits of the maximum sentence is unlikely to be unduly harsh or unconscionable.”).

Our independent review of the record reveals no other potential issues of arguable merit.

Upon the foregoing reasons,

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<sup>5</sup> The no-merit report offers a thorough summary of the sentencing hearing that we will not repeat here.

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

IT IS FURTHER ORDERED that Attorney Bradley J. Lochowicz is relieved from further representing Tequila L. Cole 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*