OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS
110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

November 7, 2018

To:

Hon. Mary Kay Wagner
Circuit Court Judge
Kenosha County Courthouse
912 56th St.
Kenosha, WI 53140

Bradley J. Lochowicz
Seymour, Kremer, Koch, Lochowicz & Duquette
P.O. Box 470
Elkhorn, WI 53121-0470

Rebecca Matoska-Mentink
Clerk of Circuit Court
Kenosha County Courthouse
912 56th St.
Kenosha, WI 53140

Criminal Appeals Unit
Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

Michael D. Graveley
District Attorney
912 56th St.
Kenosha, WI 53140-3747

LaToya S. Edwards, #659104
Taycheedah Correctional Inst.
P.O. Box 3100
Fond du Lac, WI 54936-3100

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

2018AP272-CRNM State of Wisconsin v. LaToya S. Edwards (L.C. #2016CF918)

Before Neubauer, C.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).

LaToya S. Edwards appeals from a judgment convicting her of attempted armed robbery and armed robbery as party to a crime. Appointed 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).

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

Edwards was advised of her right to file a response but has not done so. Upon consideration of the no-merit report and an independent review of the record as mandated by ***Anders*** and RULE 809.32, we summarily affirm the judgment because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

Dressed in Burger King garb from their prior employment, Edwards and a co-actor attempted to rob a Burger King restaurant. Thwarted by the general manager, they went to a second Burger King less than an hour later. This time Edwards brandished a gun and forced the manager to divulge the code to the restaurant safe. She entered guilty pleas to attempted armed robbery and armed robbery as party to a crime. The circuit court sentenced her to concurrent sentences of five years' initial confinement (IC) plus four years' extended supervision (ES) on the attempt charge and nine years' IC plus seven years' ES on the armed robbery. The sentences also were ordered concurrent with a sentence she already was serving in Illinois for burglary. This no-merit appeal followed.

The no-merit report first addresses whether the sentence was the result of an erroneous exercise of discretion or unduly harsh. We agree with appellate counsel's general analysis and conclusion that the sentence resulted from a proper exercise of discretion.[2]

The report also considers whether Edward's plea was freely, voluntarily, and knowingly entered. It is correct that the court engaged in a colloquy largely satisfying the requirements of ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. In addition, the court

[2] The facts of the cases counsel cites strike us as inapt to Edward's case, however. They describe child abuse resulting in death, the sexual assault at knife point of a twelve-year-old babysitter, and two cases involving heinous gang rapes.

specifically referred to and reviewed with Edwards the plea questionnaire/waiver of rights form, ascertaining that she understood its content. *See* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987); *see also* ***State v. Hoppe***, 2009 WI 41, ¶¶30-32, 317 Wis. 2d 161, 765 N.W.2d 794.

Appellate counsel apparently overlooks two omissions in the colloquy. First, the court failed to advise Edwards of the deportation warning WIS. STAT. § 971.08(1)(c) mandates. The failure to do so is not grounds for relief, however, unless the defendant can show that his or her plea is likely to result in deportation, exclusion from admission to this country, or denial of naturalization. Sec. 971.08(2). Nothing in the record suggests that Edwards would be at risk of any of those consequences. Further, the plea questionnaire/waiver-of-rights form she signed advised her of those consequences and she confirmed to the court that she reviewed the form with counsel and understood it. There would be no merit to a motion to withdraw the plea based on the failure to give the deportation warning.

Second, the circuit court failed to specifically advise Edwards, as required by ***State v. Hampton***, 2004 WI 107, ¶69, 274 Wis. 2d 379, 683 N.W.2d 14, that it was not bound by any sentencing recommendations and could impose up to the maximum sentence. The State recommended only an unspecified prison term without advocating that it be served consecutively or concurrently. The Department of Corrections' recommendation essentially mirrored what the court ordered. With a lengthier DOC recommendation or a more specific recommendation from the State, this could have been a significant oversight, as Edwards faced up to a $150,000 fine and up to sixty years' imprisonment, which could have been ordered consecutively. Because the court imposed concurrent sentences far below what was available, Edwards was not affected by the defect in the plea colloquy and could not show that plea withdrawal would be "necessary to

correct a manifest injustice," which "occurs when there has been 'a serious flaw in the fundamental integrity of the plea.'" *See* ***State v. Cross***, 2010 WI 70, ¶42, 326 Wis. 2d 492, 786 N.W.2d 64 (citation omitted).

Our review of the record discloses no other potential issues for appeal. Edward's guilty pleas waived the right to raise nonjurisdictional defects and defenses arising from proceedings before entry of the pleas, including claimed violations of constitutional rights. ***State v. Kraemer***, 156 Wis. 2d 761, 765, 457 N.W.2d 562 (Ct. App. 1990). Accordingly, this court accepts the no-merit report, affirms the conviction, and discharges appellate counsel of the obligation to represent Edward further in this appeal.

Upon the foregoing reasons,

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 Edwards 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