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**DISTRICT III/IV**

February 14, 2019

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

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2017AP2170-CRNM      State of Wisconsin v. Katie N. Heller (L.C. # 2015CF383)

Before Sherman, Blanchard, and Kloppenburg, 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).**

Katie Heller appeals a felony judgment convicting her, based upon no contest pleas, of being party to a crime of second-degree reckless homicide by use of a dangerous weapon, two

counts of perjury, and one count of conspiracy to commit perjury.<sup>1</sup> Attorney Jefren Olsen has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2017-18);<sup>2</sup> *Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit report addresses the validity of Heller’s pleas and sentences. Heller was sent a copy of the report, and has filed a response asserting that trial counsel had conflicts of interest; that there was no evidence that she was at the crime scene; that the dangerous weapon enhancer was unwarranted because she was not the shooter; that trial counsel should have arranged for her to take a handwriting test; that her sentence was unduly harsh; and that she didn’t know that the State can offer more than one plea deal. Upon reviewing the entire record, as well as the no-merit report and response, we conclude that there are no arguably meritorious appellate issues.

First, we see no arguable basis for plea withdrawal. The circuit court conducted a plea colloquy, inquiring into Heller’s ability to understand the proceedings and the voluntariness of her pleas, and further exploring her understanding of the nature of the charges, the penalty ranges and other direct consequences of the pleas, and the constitutional rights being waived. In addition, Heller provided the court with a signed plea questionnaire, with attached sheets setting forth the elements of the offenses. One of those sheets addressed party to a crime liability, under which it was not necessary for Heller to have been the shooter to be found guilty of the homicide—including the dangerous weapon enhancer.

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<sup>1</sup> There was an accompanying misdemeanor judgment on a charge of obstructing an officer as a party to a crime that Heller has not appealed.

<sup>2</sup> All references to the Wisconsin Statutes are to the 2017-18 version, unless otherwise noted.

The facts set forth in the complaint and at a probable cause hearing—namely, that Heller accompanied her boyfriend Matthew Moore to the home of Thomas Wick, to whom Heller and Moore owed payments on a land contract that they could not make; that Moore shot Wick to death and Heller picked up the casings; and that Heller subsequently lied in John Doe proceedings related to the homicide—provided a sufficient factual basis for the pleas. In conjunction with the plea questionnaire and complaint, the colloquy was sufficient to satisfy the court’s obligations under WIS. STAT. § 971.08. See *State v. Hoppe*, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794; *State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987).

Heller’s assertion that she did not know the State could make multiple plea offers does not undermine the validity of her pleas, because there is no indication that the State made any additional offer that counsel failed to convey to Heller. The State had no obligation to offer Heller any plea agreement, much less multiple ones.

By entering valid pleas, Heller waived her right to have the State prove beyond a reasonable doubt any elements of the offense relying on disputed facts, including whether Heller was at the crime scene, or whether handwriting on the wall of the scene matched hers. Therefore, there was no need for counsel to obtain a handwriting expert.

Next, Heller discovered her lawyer worked at the same law firm as the trial judge’s brother, and that the prosecutor was the cousin of her lawyer’s wife, and asserts that these relationships represented conflicts of interest. Neither of these relationships is one that would require statutory recusal, however, and Heller has provided no reason to think that either relationship subjected her to any prejudice.

Finally, a challenge to Heller’s sentences would also lack arguable merit. We agree with counsel’s analysis in the no-merit report that the sentences imposed did not exceed the maximum available penalties and that the record shows that the circuit court considered relevant sentencing factors and rationally explained their application to this case. *See generally State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. We are also satisfied that the sentences were not unduly harsh, taking into account the severity of the offense, the fact that Heller had already reduced her sentence exposure by entering a plea to a reduced charge, and the fact that the court did not apply additional time for the penalty enhancer. *See generally State v. Grindemann*, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507.

Upon an independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

Accordingly,

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

IT IS FURTHER ORDERED that Attorney Jefren Olsen is relieved of any further representation of Heller in this matter pursuant to 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*