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July 12, 2019

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

2018AP2352-CRNM State of Wisconsin v. Teresa N. Nieves (L.C. # 2017CF1384)

Before Brash, P.J., Kessler and Brennan, 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).

Teresa N. Nieves appeals a judgment convicting her of one count of burglary and an order denying her motion for postconviction relief. Attorney Nicole M. Masnica was appointed to represent Nieves for postconviction and appellate proceedings. She filed a no-merit report

pursuant to WIS. STAT. RULE 809.32 (2017-18),¹ and *Anders v. California*, 386 U.S. 738 (1967). Nieves received a copy of the report and was advised of her right to file a response, but she has not responded. After considering the report and conducting an independent review of the record, we conclude that there are no issues of arguable merit that could be raised on appeal. See WIS. STAT. RULE 809.21. However, there is a clerical error in the judgment of conviction. Therefore, we remand the same to the clerk of circuit court to correct the error as directed later in this opinion.

The no-merit report first addresses whether there would be arguable merit to a claim that Nieves did not knowingly, intelligently, and voluntarily enter her guilty plea. The circuit court conducted a very thorough colloquy with Nieves that complied with WIS. STAT. § 971.08 and *State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986). Nieves completed and signed a plea questionnaire and waiver of rights form with her attorney and informed the court that she reviewed the information with her counsel. See *State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987) (the court may rely on a plea questionnaire and waiver of rights form in assessing the defendant's knowledge about the rights he or she is waiving). There would be no arguable merit to an appellate challenge to the plea.

The no-merit report next addresses whether there would be arguable merit to a claim that the circuit court misused its sentencing discretion when it sentenced Nieves. The circuit court sentenced Nieves to forty-two months of initial incarceration and forty-two months of extended supervision. The record establishes that the circuit court carefully considered the general

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

objectives of sentencing and applied the relevant sentencing factors in light of the facts of this case and addressed them in its sentencing decision, reaching a reasonable result. *See State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76 (the court must identify the factors it considered and explain how those factors fit the objectives and influenced its sentencing decision). There would be no arguable merit to a challenge to the sentence.

The no-merit report then addresses whether the circuit court erred in denying Nieves's postconviction motion to modify her sentence and grant her eligibility for a prison treatment program. Nieves argued that she was diagnosed with mental illness after she entered prison, and the new diagnosis was grounds for sentence modification. The circuit court explained in its written decision denying Nieves's motion that the need to protect the community from Nieves's repeated criminal activities was its primary concern in sentencing Nieves, and it intended that Nieves spend the entire length of the initial incarceration portion of her sentence in prison. The circuit court acted within its discretion in denying the motion. Therefore, there would be no arguable merit to a claim that Nieves's postconviction motion was improperly denied.

Our review of the record discloses a clerical error in the judgment of conviction, which was not discussed by counsel. The habitual criminality enhancer was dismissed pursuant to the plea agreement. The judgment of conviction incorrectly includes the enhancer although the circuit court did not consider it during sentencing. We therefore remand the judgment of conviction with directions to the clerk of the circuit court to amend the same to remove the habitual criminality enhancer. *See WIS. CT. APP. IOP VI(5)(j)* (Nov. 30, 2009).

There are no other potential issues for appeal. Accordingly, we accept the no-merit report, affirm the judgment of conviction and order denying postconviction relief, and discharge appellate counsel of the obligation to represent Nieves further in this appeal.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of conviction and order denying postconviction relief are summarily affirmed and the cause is remanded with directions. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Nicole M. Masnica is relieved from further representing Teresa N. Nieves 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