



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

September 25, 2019

To:

Hon. Michael P. Maxwell
Circuit Court Judge
515 W. Moreland Blvd.
Waukesha, WI 53188

Gina Colletti
Clerk of Circuit Court
Waukesha County Courthouse
515 W. Moreland Blvd.
Waukesha, WI 53188

Katie Babe
Lakeland Law Firm, LLC
N27W23957 Paul Rd., Ste. 206
Pewaukee, WI 53072

Susan Lee Opper
District Attorney
515 W. Moreland Blvd., Rm. G-72
Waukesha, WI 53188-2486

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

Krista M. Weik 657486
Robert Ellsworth Corr. Center
21425-A Spring St.
Union Grove, WI 53182-9408

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

2019AP371-CRNM State of Wisconsin v. Krista M. Weik (L.C. #2016CF204)

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).

Krista M. Weik appeals from a judgment convicting her of several crimes. Weik's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2017-18)¹ and *Anders v. California*, 386 U.S. 738 (1967). Weik filed a response. After reviewing the record,

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

counsel's report, and Weik's response, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment. WIS. STAT. RULE 809.21.

Weik was convicted following no contest pleas to possession of narcotic drugs, attempted battery to a law enforcement officer, and two counts of felony bail jumping. Eleven additional charges were dismissed and read in.² The circuit court imposed an aggregate sentence of three years of initial confinement and three years of extended supervision.

Weik filed a postconviction motion requesting sentence modification. In it, she sought resentencing on the basis of inaccurate information.³ Alternatively, she asked for commutation of her sentence. The circuit court denied the motion, noting that it did not rely upon the inaccurate information and that commutation would frustrate its original sentencing intent. This no-merit appeal follows.

The no-merit report addresses whether Weik's no contest pleas were knowingly, voluntarily, and intelligently entered. The record shows that the circuit court engaged in a colloquy with Weik that satisfied the applicable requirements of WIS. STAT. § 971.08(1) and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. In addition, a signed plea questionnaire and waiver of rights form was entered into the record, along with the relevant jury

² The additional charges were five counts of felony bail jumping, three counts of disorderly conduct, two counts of resisting an officer, and one count of attempted battery to a law enforcement officer.

³ Weik complained that the circuit court erroneously found her eligible for the earned release and challenge incarceration programs. Weik was statutorily excluded from those programs due to her conviction for attempted battery. *See* WIS. STAT. § 973.01(3g), (3m).

instructions detailing the elements of the offenses. We agree with counsel that a challenge to the entry of Weik's no contest pleas would lack arguable merit.

The no-merit report also addresses whether the circuit court properly exercised its discretion at sentencing. The record reveals that the court's sentencing decision had a "rational and explainable basis." *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (citation omitted). The court considered the seriousness of the offenses, Weik's character, and the need to protect the public. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Under the circumstances of the case, which were aggravated by the read-in offenses, the sentence imposed does not "shock public sentiment and violate the judgment of reasonable people concerning what is right and proper." *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We agree with counsel that a challenge to Weik's sentence would lack arguable merit.⁴

Finally, the no-merit report addresses whether the circuit court properly denied Weik's postconviction motion requesting sentence modification. The circuit court thoroughly explained its reasons for denying the motion. We are satisfied that the no-merit report properly analyzes this issue as without merit, and we will not discuss it further.

As noted, Weik filed a response to the no-merit report. In it, she cites her progress in prison and asks for early release. Although Weik's rehabilitative efforts are commendable, they

⁴ The circuit court initially imposed a sentence on one count (possession of narcotic drugs) that exceeded the maximum term of initial confinement by six months. When brought to the court's attention, it restructured the aggregate sentence in a way that made it both legal and consistent with its original sentencing intent. This was permissible under *State v. Holloway*, 202 Wis. 2d 694, 701, 551 N.W.2d 841 (Ct. App. 1996).

are not new factors justifying sentence modification. *See State v. Prince*, 147 Wis. 2d 134, 136, 432 N.W.2d 646 (Ct. App. 1988).

Our independent review of the record does not disclose any potentially meritorious issue for appeal. Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report and relieve Attorney Katie Babe of further representation in this matter.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Katie Babe is relieved of further representation of Weik in this matter.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals