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November 7, 2019

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

2018AP1015-CRNM State of Wisconsin v. Lisa L. Rockstroh (L.C. # 2016CF29)

Before Blanchard, J.¹

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).

Attorney Linda Schaefer, appointed counsel for Lisa Rockstroh, has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738, 744 (1967). Attorney Katie Babe has substituted as appointed counsel.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2017-18). All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

Counsel has informed this court that Rockstroh died on September 23, 2018. Because the right to appeal continues despite a defendant's death, this appeal is not moot. *See State v. McDonald*, 144 Wis. 2d 531, 536, 424 N.W.2d 411 (1988). Upon independently reviewing the entire record, as well as the no-merit report, we agree with counsel's assessment that there are no arguably meritorious appellate issues. Accordingly, we affirm.

Rockstroh was charged with one count of aggravated battery and one count of first-degree recklessly endangering safety, both by use of a dangerous weapon and as a repeater. Pursuant to a plea agreement, Rockstroh pled no-contest to amended charges of one count of disorderly conduct and one count of carrying a concealed weapon, both as a repeater. The court sentenced Rockstroh to a total of eighteen months of initial confinement and six months of extended supervision.

The no-merit report addresses whether there would be arguable merit to a challenge to Rockstroh's plea. A post-sentencing motion for plea withdrawal must establish that plea withdrawal is necessary to correct a manifest injustice, such as a plea that was not knowing, intelligent, and voluntary. *State v. Brown*, 2006 WI 100, ¶18, 293 Wis. 2d 594, 716 N.W.2d 906. Here, the circuit court conducted a plea colloquy that, together with the plea questionnaire and waiver of rights form that Rockstroh signed, satisfied the court's mandatory duties to personally address Rockstroh and determine information such as Rockstroh's understanding of the nature of the charge and the range of punishments she faced, the constitutional rights she waived by entering a plea, and the direct consequences of the plea. *See State v. Hoppe*, 2009 WI 41, ¶¶18, 30, 317 Wis. 2d 161, 765 N.W.2d 794. There is no indication of any other basis for plea withdrawal. Accordingly, we agree with counsel's assessment that a challenge to Rockstroh's plea would lack arguable merit.

The no-merit report also addresses whether there would be arguable merit to a challenge to Rockstroh's sentence. We agree with counsel's assessment that any challenge to the court's sentencing would lack arguable merit. Our review of a sentence determination begins "with the presumption that the trial court acted reasonably, and the defendant must show some unreasonable or unjustifiable basis in the record for the sentence complained of." *State v. Krueger*, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). Here, the court explained that it considered facts pertinent to the standard sentencing factors and objectives, including the seriousness of the offense, Rockstroh's character, and the need to protect the public. *See State v. Gallion*, 2004 WI 42, ¶¶39-46 & n.11, 270 Wis. 2d 535, 678 N.W.2d 197. The sentence imposed was within the maximum allowed by law and, given the facts of this case, there would be no arguable merit to a claim that the sentence was unduly harsh or excessive. *See State v. Stenzel*, 2004 WI App 181, ¶21, 276 Wis. 2d 224, 688 N.W.2d 20 (a sentence is unduly harsh or excessive "only where the sentence is so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances" (quoted source omitted)). We also agree with counsel's assessment that there would be no arguable merit to a challenge to the circuit court's determination that Rockstroh was not entitled to sentence credit, on the basis that the sentence was imposed consecutively to Rockstroh's revocation sentence and counsel's undisputed assertion that Rockstroh received the credit in the revocation case. *See State v. Boettcher*, 144 Wis. 2d 86, 423 N.W.2d 533 (1988).

Upon our 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.

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

IT IS FURTHER ORDERED that Attorney Katie Babe is relieved of any further representation of Lisa Rockstroh in this matter. *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