



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 IV

June 11, 2020

To:

Hon. Jill Karofsky
Circuit Court Judge
Dane County Courthouse
215 S. Hamilton St.
Madison, WI 53703

Carlo Esqueda
Clerk of Circuit Court
Dane County Courthouse
215 S. Hamilton St., Rm. 1000
Madison, WI 53703

Lane Fitzgerald
The Fitzgerald Law Firm
2031 Riverside Dr., Ste. A
Beloit, WI 53511-2907

James Brian Woywod
Assistant District Attorney
215 S. Hamilton St., Ste. 3000
Madison, WI 53703-3211

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

Rita-Beth Sauer 232356
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:

2019AP540-CRNM State of Wisconsin v. Rita-Beth Sauer (L.C.# 2017CF2493)

Before Blanchard, Kloppenburg, and Nashold, 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).

Attorney Lane Fitzgerald, appointed counsel for Rita-Beth Sauer, has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2017-18)¹ and *Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit report addresses whether there

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

would be arguable merit to a challenge to Sauer's plea or sentencing. Sauer was sent a copy of the report, but has not filed a response. 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.

Sauer was charged with operating a motor vehicle while intoxicated (OWI) and operating with a prohibited blood alcohol concentration (PAC), both as a sixth offense, with a minor passenger under sixteen years of age in the vehicle, and with the alcohol fine enhancer; and operating after revocation. Pursuant to a plea agreement, Sauer pled guilty to OWI, sixth offense and with a child under sixteen years of age in the vehicle; the other counts were dismissed; and the State limited its sentencing recommendation to one and one-half years of initial confinement, consecutive to the revocation sentence Sauer was contemporaneously serving. The circuit court sentenced Sauer to two and one-half years of initial confinement and two and one-half years of extended supervision, concurrent to the revocation sentence Sauer was contemporaneously serving, and imposed a \$1,200 fine, plus costs.

The no-merit report first addresses whether there would be arguable merit to a challenge to Sauer's plea. A post-sentencing motion for plea withdrawal must establish that plea withdrawal is necessary to correct a manifest injustice, such as that the plea 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 that Sauer signed, satisfied the court's mandatory duties to personally address Sauer and determine certain information, such as Sauer'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 from the record of any other basis for plea withdrawal. Accordingly, we agree with counsel's assessment that a challenge to Sauer's plea would lack arguable merit. A valid guilty plea constitutes a waiver of all nonjurisdictional defects and defenses. *State v. Kelty*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886.

The no-merit report next addresses whether there would be arguable merit to a challenge to Sauer's sentence. We agree with counsel that this issue lacks arguable merit. Our review of a sentence determination begins "with the presumption that the [circuit] 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 circuit court appropriately explained that it considered facts pertinent to the standard sentencing factors and objectives, including the seriousness of the offense, Sauer'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 was within the maximum Sauer faced 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." (citation omitted)). The court awarded Sauer 199 days of sentence credit, on counsel's stipulation. We discern in the record no other basis to challenge the sentence imposed by the circuit court.

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 Lane Fitzgerald is relieved of any further representation of Rita-Beth Sauer 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