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July 7, 2020

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

2018AP1907-CRNM State of Wisconsin v. Samantha M. Walker (L.C. # 2017CF902)

Before Brash, P.J., Dugan and White, 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).

Samantha M. Walker appeals from a judgment of conviction entered upon her no-contest plea to one count of homicide by intoxicated use of a vehicle. Her 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). Walker filed a response. Upon consideration of counsel's report, Walker's

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

response, and an independent review of the record, we conclude that the judgment may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

The State filed a complaint charging Walker with: (Ct. 1) homicide by operating a motor vehicle while intoxicated; (Ct. 2) homicide by operating a motor vehicle with a prohibited alcohol concentration; and (Ct. 3) operating a motor vehicle while suspended, causing death. The complaint alleged that Walker was driving at the rate of eighty-one miles per hour when she struck and killed the victim, a pedestrian crossing the street. The speed limit was thirty miles per hour. Walker, who remained on the scene and gave a statement, told police she had consumed alcohol and marijuana that evening. A half-empty bottle of tequila was found in Walker's car. Test results revealed that Walker's blood-alcohol concentration was 0.135 grams per milliliter. According to the complaint, Walker told police she saw the pedestrian and "tried braking but was too close, and she ended up hitting him." Records showed that her license was suspended.

Pursuant to a negotiated settlement, Walker pled no-contest to count one, a Class D felony, and the State agreed to recommend prison, leaving the length up to the circuit court. At sentencing, the court imposed a bifurcated sentence totaling ten and one-half years, with four and one-half years of initial confinement, followed by six years of extended supervision. Further, the court found Walker "eligible for the substance abuse program after three and a half years."

Counsel's no-merit report discusses whether Walker's no-contest plea was knowing, intelligent, and voluntary. The circuit court's plea-taking duties are set forth in WIS. STAT. § 971.08(1) and summarized in *State v. Brown*, 2006 WI 100, ¶35, 293 Wis.2d 594, 716 N.W.2d 906. Here, the court engaged in a colloquy that, together with the plea questionnaire and

addendum signed by Walker, satisfied the court's mandatory duties. *See State v. Hoppe*, 2009 WI 41, ¶¶18, 30, 317 Wis.2d 161, 765 N.W.2d 794. We agree with appellate counsel's conclusion that no issue of arguable merit arises from the entry of Walker's no-contest plea.

Next, counsel's no-merit report discusses whether the circuit court properly exercised its sentencing discretion. It is a well-settled principle of law that sentencing is committed to the circuit court's discretion and our review is limited to determining whether the court erroneously exercised that discretion. *See State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. In fashioning its sentence, the court considered the gravity of the offense, Walker's character, and the need to protect the public. *See State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The court acknowledged the existence of various mitigating factors relating to the offense and to Walker's character, but determined that "the aggravating factors are sufficient and the needs of the public are so high that [the sentence imposed] is an absolutely necessary sentence." The court also identified specific and general deterrence as central objectives. The sentencing court considered appropriate factors and objectives and reached a rational result. Further, under the circumstances of this case, it cannot reasonably be argued that Walker's sentence is so excessive as to shock public sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We agree with appellate counsel that a challenge to Walker's sentence would lack arguable merit.

Counsel's no-merit report also addresses the potential issues of whether the sentencing court relied on inaccurate information entitling Walker to a resentencing, and whether any new

factor exists to support sentence modification.² This court is satisfied that the no-merit report properly analyzes the issues it raises as without merit, and this court will not discuss them further.

In her response, Walker highlights the mitigating factors presented to the sentencing court, and asserts that her “excellent” institutional behavior and completion of prison programs make her a “model inmate.” Based on this favorable information, she asks this court to modify her sentence by “commut[ing]” the remainder of her initial confinement time to extended supervision. This court cannot modify Walker’s sentence as part of the WIS. STAT. RULE 809.32 no-merit procedure. Our role in a no-merit appeal is to determine whether there is any arguable merit to an appeal. *See State ex rel. Flores v. State*, 183 Wis. 2d 587, 606, 516 N.W.2d 362 (1994). If we discern an issue that has arguable merit, we will order additional postconviction or further appellate proceedings as appropriate. *See Anders*, 386 U.S. at 744; *State v. Tillman*, 2005 WI App 71, ¶¶16-18, 281 Wis. 2d 157, 696 N.W.2d 574.

Further, none of the information presented in Walker’s response constitutes a new factor warranting sentence modification. To the discussion in appellate counsel’s no-merit report, we add that though Walker’s postconviction achievements in prison may be laudable, they are not grounds for modification of her sentence. *See e.g., State v. Kluck*, 210 Wis. 2d 1, 7-8, 563 N.W.2d 468 (1997) (postsentencing progress or rehabilitation is not a “new factor” for sentence modification purposes).

² In terms of potentially inaccurate information, appellate counsel discusses allegations made at sentencing that Walker visited a nightclub during the pendency of her case. As grounds for a new factor, counsel discusses that despite the sentencing court’s eligibility finding, Walker was statutorily ineligible for the substance abuse program.

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the conviction, and discharges appellate counsel of the obligation to further represent Walker on appeal. Therefore,

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

IT IS FURTHER ORDERED that Attorney Gabriel William Houghton is relieved from further representing Samantha M. Walker in this appeal. 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