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DISTRICT II

December 16, 2020

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

2019AP2251-CRNM State of Wisconsin v. Pearl Labarge (L.C. #2018CM1949)

Before Neubauer, C.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).

Pearl Labarge appeals from a judgment convicting her on her guilty plea of possessing tetrahydrocannabinols near a prohibited location (correctional institution) contrary to WIS. STAT.

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.

§§ 961.41(3g)(e) and 961.495 as a repeat offender. Labarge’s appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Labarge received a copy of the report and was advised of her right to file a response. She has not done so. Upon consideration of the report and an independent review of the record as mandated by *Anders* and RULE 809.32, we summarily affirm the judgment because there are no issues that would have arguable merit for appeal. WIS. STAT. RULE 809.21.

The circuit court sentenced Labarge to an enhanced sentence of one year in jail consecutive to a current prison sentence. Labarge committed the offense upon returning to the correctional institution from work release. Because she was incarcerated when she committed the offense, sentence credit was not due. *State v. Tuescher*, 226 Wis. 2d 465, 470, 595 N.W.2d 443 (Ct. App. 1999) (“defendant is not entitled to pre-sentence credit for time spent serving a sentence on a different, unrelated charge”).

The no-merit report addresses the following possible appellate issues: (1) whether Labarge’s guilty plea was knowingly, voluntarily, and intelligently entered; (2) whether the circuit court misused its sentencing discretion; and (3) whether Labarge received effective assistance from her trial counsel. After reviewing the record, we conclude that counsel’s no-merit report properly analyzes these issues and correctly determines that these issues lack arguable merit.

The plea colloquy complied with *State v. Hoppe*, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794. The colloquy was thorough and informed Labarge of each of the constitutional rights waived by her plea. “[A] guilty plea waives all nonjurisdictional defects and defenses.”

State v. Popp, 2014 WI App 100, ¶13, 357 Wis. 2d 696, 855 N.W.2d 471 (citation omitted). Any challenge to the entry of Labarge’s guilty plea would lack arguable merit for appeal.

The circuit court also engaged in a proper exercise of sentencing discretion after considering various sentencing factors. *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (we review the sentence for a misuse of discretion); *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76 (sentencing objectives and factors discussed). During the plea colloquy, Labarge admitted her repeater status arising from prior convictions, and the circuit court properly imposed an enhanced status.

Finally, our review of the record does not reveal any basis for an ineffective assistance of trial counsel claim.

In addition to the issues discussed above, we have independently reviewed the record. Our independent review of the record did not disclose any arguably 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, affirm the judgment of conviction, and relieve Attorney Mark Schoenfeldt of further representation of Labarge 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 Mark A. Schoenfeldt is relieved of further representation of Pearl Labarge in this matter.

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

Sheila T. Reiff
Clerk of Court of Appeals