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 I

December 22, 2020

To:

Hon. Jeffrey A. Wagner
Milwaukee County Courthouse
901 N. 9th St.
Milwaukee, WI 53233

John Barrett
Clerk of Circuit Court
821 W. State Street, Room 114
Milwaukee, WI 53233

Elizabeth A. Longo
Assistant District Attorney
District Attorney's Office
821 W. State. St. - Ste. 405
Milwaukee, WI 53233

Mark A. Schoenfeldt
Law Offices of Attorney Mark A. Schoenfeldt
500 West Silver Spring Drive, Suite K200
Glendale, WI 53217

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

Jasmine C. McDonald 616341
Supervised Living Facility
P.O. Box 10
Winnebago, WI 54985

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

2020AP1409-CRNM State of Wisconsin v. Jasmine C. McDonald (L.C. # 2017CF3920)

Before Brash, P.J., Donald 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).

Jasmine C. McDonald appeals from an amended judgment,[1] entered upon her guilty plea, convicting her on one count of first-degree reckless homicide. Appellant counsel, Mark A.

[1] The notice of appeal indicates that this appeal is taken from the July 16, 2018 judgment of conviction. However, that judgment was superseded by an amended judgment, entered on October 24, 2018, adjusting McDonald's sentence to conform to the law. We construe the notice of appeal accordingly. *See* ***Rhyner v. Sauk Cnty.***, 118 Wis. 2d 324, 326, 348 N.W.2d 588 (Ct. App. 1984).

Schoenfeldt, has filed a no-merit report pursuant to ***Anders v. California***, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2017-18).[2] McDonald was advised of her right to file a response, but she has not responded. Upon this court's independent review of the record, as mandated by ***Anders***, and counsel's report, we conclude that there are no issues of arguable merit that could be pursued on appeal. We therefore summarily affirm the amended judgment.

On October 10, 2013, police responded to a single-car accident and possible car fire. A citizen witness had observed a young woman flee the accident scene, then return with a small bottle of liquid that she dumped on the car's interior before lighting a napkin and tossing it in. The witness removed the napkin before the interior could ignite. The registered owner of the vehicle was identified as R.L.J.; upon further investigation, police found R.L.J. stabbed to death in his home.

The car was processed for fingerprints and DNA, and DNA profiles were developed from a swab taken from the car's interior. R.L.J. was identified as the major contributor to that sample, but there was also an unidentified minor contributor. The minor contributor's profile was entered into the databanks in March 2014, but there were no matches at that time. Police had no other leads, so the case went cold.

On June 22, 2017, there was a databank hit for this case, indicating that there was a DNA profile in the databank that was a probable substantial match to the minor contributor. That new profile belonged to McDonald; it was entered in the system after McDonald's February 2017 arrest for armed robbery.

[2] All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

McDonald was interviewed, and she admitted stabbing R.L.J. She explained that she had been sixteen at the time, and she walked past R.L.J.'s house almost every day. One day, about three months before the homicide, R.L.J. struck up a conversation with McDonald as she walked past. She told him that she was walking to a neighborhood store. R.L.J. asked her to pick up a snack and a drink for him; McDonald agreed. R.L.J. gave her fifty dollars for the four-dollar purchase and told her to keep the change. This happened approximately ten times over the next three months.

On the date that R.L.J. was stabbed, he again asked McDonald to make his usual purchase. This time, he claimed he did not have the money on him and invited her inside his house. When McDonald followed him into his home, entering through what appeared to be a bedroom, R.L.J. closed the door behind her, grabbed her arm, and attempted to lift her shirt. McDonald pushed him onto the bed, and he reached for a knife on the nightstand. McDonald grabbed the knife instead and struggled with R.L.J. for about a minute before stabbing him approximately forty-one times. McDonald then fled in R.L.J.'s car, crashing it and hitting her head on the steering wheel or windshield. She did not remember returning to the car after the crash or trying to set it ablaze.

McDonald was charged with one count of first-degree reckless homicide with a dangerous weapon. She ultimately agreed to resolve the case through a plea agreement. In exchange for her guilty plea, the State would dismiss the weapon enhancer and refrain from making a specific sentence recommendation. In July 2018, the circuit court imposed a forty-five year sentence, divided into nineteen years of initial confinement and twenty-six years of extended supervision.

First-degree reckless homicide is a Class B felony for which the maximum term of imprisonment is a total of sixty years. *See* WIS. STAT. §§ 940.02, 939.50(3)(b). The extended supervision term for a Class B felony sentence cannot exceed twenty years. *See* WIS. STAT. § 973.01(2)(d)1. Accordingly, the Department of Corrections wrote to the circuit court in October 2018 and asked it to review McDonald's sentence. Acknowledging the error, the circuit court commuted the extended supervision term from twenty-six to twenty years and entered an amended judgment of conviction. McDonald appeals.

Appellate counsel first discusses whether McDonald's guilty plea was knowing, intelligent, and voluntary. *See* ***State v. Bangert***, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). McDonald completed a plea questionnaire and waiver of rights form, *see* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987), in which she acknowledged that her attorney had explained the elements of the offense. The form correctly acknowledged the maximum penalties McDonald faced and the form, along with an addendum, also specified the constitutional rights she was waiving with her plea. *See* ***Bangert***, 131 Wis. 2d at 262, 271.

The circuit court also conducted a plea colloquy, as required by WIS. STAT. § 971.08, ***Bangert***, and ***State v. Hampton***, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. One of the circuit court's duties when accepting a guilty plea is to "[i]nform the defendant of the constitutional rights [s]he waives by entering a plea and verify that the defendant understands [s]he is giving up these rights." *See* ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906; ***Hampton***, 274 Wis. 2d 379, ¶24. The plea questionnaire lists seven rights; in the

colloquy, the circuit court expressly reviewed only two of those rights with McDonald: the right to a jury trial with a unanimous verdict and the right to make the State meet its burden of proof.[3] However, the circuit court specifically asked McDonald if she was "waiving those constitutional rights that are contained in the guilty plea questionnaire and waiver of rights form" that she had signed; it also asked if she had discussed and understood everything with her lawyer. McDonald answered both questions affirmatively and further acknowledged she was waiving the two rights the circuit court expressly reviewed. Accordingly, although the circuit court "did not individually recite and specifically address each constitutional right on the record, the plea colloquy proceedings as a whole reflects that [McDonald] understood the constitutional rights [s]he was waiving."[4] *See* ***State v. Pegeese***, 2019 WI 60, ¶40, 387 Wis. 2d 119, 928 N.W.2d 590.

Additionally, the plea questionnaire and waiver of rights form and addendum and the circuit court's colloquy appropriately advised McDonald of the elements of her offense and the potential penalties she faced, and otherwise complied with the requirements for ensuring that a plea is knowing, intelligent, and voluntary. Thus, we conclude that there is no arguable merit to a challenge to the plea's validity.

Appellate counsel next discusses whether there was sufficient evidence to establish a factual basis for McDonald's plea. *See* WIS. STAT. § 971.08(1)(b). We agree with counsel's

[3] We therefore disagree with appellate counsel's assessment in the no-merit report that the circuit court "reviewed with [McDonald] each of the rights that [s]he was giving up by entering these pleas [sic]."

[4] We nevertheless remind counsel and the circuit court that while "the circuit court may utilize a waiver of rights form" in taking a plea, "the use of that form does not otherwise eliminate the circuit court's plea colloquy duties." *See* ***State v. Pegeese***, 2019 WI 60, ¶39, 387 Wis. 2d 119, 928 N.W.2d 590.

analysis and conclusion in the no-merit report that this issue lacks arguable merit, and we do not discuss it further.

The third issue appellate counsel discusses is whether the circuit court erroneously exercised its sentencing discretion. *See* ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. At sentencing, a court must consider the principal objectives of sentencing, including the protection of the community, the punishment and rehabilitation of the defendant, and deterrence to others, ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76, and determine which objective or objectives are of greatest importance, *see* ***Gallion***, 270 Wis. 2d 535, ¶41. In seeking to fulfill the sentencing objectives, the court should consider primary factors including the gravity of the offense, the character of the offender, and the protection of the public, and may consider other factors. *See* ***State v. Odom***, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695. The weight to be given to each factor is committed to the circuit court's discretion. *See* ***Ziegler***, 289 Wis. 2d 594, ¶23. We will sustain a circuit court's exercise of sentencing discretion if the conclusion reached by the circuit court was one a reasonable judge could reach, even if this court or another judge might have reached a different conclusion. *See* ***Odom***, 294 Wis. 2d 844, ¶8.

After reproducing seven pages of the sentencing transcript, including the circuit court's imposition of nineteen years' initial confinement and twenty-six years' extended supervision, appellate counsel writes:

> The record shows that [circuit] court judge, at sentencing, based its decision upon consideration of the gravity of offense, the defendant's prior record, and the need for both rehabilitation and treatment as demonstrated by the fact that the defendant stabbed the victim 41 times. The court also considered the defendant's extensive prior record of undesirable behavior patterns and the

> special vulnerability of the 84 year old victim. Counsel has therefore concluded that this issue lacks arguable appellate merit.

While counsel's characterization of the circuit court's sentencing decision is generally correct, this analysis fails to mention that the twenty-six-year term of extended supervision initially imposed by the circuit court exceeded the maximum permitted by law, much less whether there was any remedy to pursue. Nevertheless, there is no arguable merit to challenging the excessive sentence because the circuit court, when informed of the error by the Department of Corrections, provided McDonald with her exclusive remedy for such an error: commutation of the sentence to the maximum allowed by law. *See* WIS. STAT. § 973.13. This reduced her forty-five year sentence to a thirty-nine year sentence.

Our review of the record confirms that, other than the error in apportioning extended supervision time, the circuit court considered appropriate sentencing objectives and factors. The maximum possible sentence McDonald could have received was sixty years of imprisonment, consisting of up to forty years of initial confinement and up to twenty years of extended supervision. The adjusted sentence of nineteen years of initial confinement and twenty years of extended supervision is within the range authorized by law, *see* ***State v. Scaccio***, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449, and is not so excessive so as to shock the public's sentiment, *see* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). Thus, we conclude that there is no arguably meritorious issue to pursue regarding the circuit court's exercise of sentencing discretion.

Finally, appellate counsel discusses whether there is any arguably meritorious claim of ineffective assistance of trial counsel. We agree with appellate counsel that the record does not support any such claim.

Our independent review of the record reveals no other potential issues of arguable merit.

Upon the foregoing, therefore,

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

IT IS FURTHER ORDERED that Attorney Mark A. Schoenfeldt is relieved of further representation of McDonald 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