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DISTRICT II

January 13, 2021

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

2020AP1114-CRNM State of Wisconsin v. Sarah J. Fitzgerald (L.C. #2018CF763)

Before Reilly, P.J., Gundrum and Davis, 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).

Sarah J. Fitzgerald appeals a judgment convicting her of possession of methamphetamine with intent to deliver. Appointed appellate counsel, Mark A. Schoenfeldt, filed a no-merit report

pursuant to WIS. STAT. RULE 809.32 (2017-18),¹ and *Anders v. California*, 386 U.S. 738, 744 (1967). Fitzgerald was advised of her right to file a response, but she has not responded. After considering the report and conducting an independent review of the record, as mandated by *Anders*, we conclude that there are no issues of arguable merit that could be raised on appeal. Therefore, we summarily affirm. *See* WIS. STAT. RULE 809.21.

The no-merit report first addresses whether there would be arguable merit to a claim that Fitzgerald's guilty plea was not knowingly, intelligently, and voluntarily entered. Before accepting the plea, the circuit court conducted a thorough plea colloquy with Fitzgerald that complied with WIS. STAT. § 971.08 and *State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986). Fitzgerald acknowledged that she reviewed the plea questionnaire and waiver of rights form with her trial counsel, that she understood the information on the form, and that she signed it. *See State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987) (stating that the circuit court may rely on a plea questionnaire and waiver of rights form in assessing the defendant's knowledge about the rights he or she is waiving.) Fitzgerald acknowledged that there was a factual basis to convict her of the crime. Therefore, there would be no arguable merit to an appellate challenge to the plea.

The no-merit report next addresses whether there would be arguable merit to a claim that the circuit court erroneously exercised its sentencing discretion when it withheld sentence and placed Fitzgerald on probation for three years, with nine months in jail with Huber privileges as a condition. The record establishes that the circuit court considered the general objectives of sentencing and applied the sentencing factors to the facts of this case, reaching a reasoned and

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

reasonable result. *See State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76 (stating that the circuit court must identify the factors it considered and explain how those factors fit the sentencing objectives and influenced its sentencing decision). Therefore, there would be no arguable merit to a challenge to the sentence.

Finally, the no-merit report addresses whether there would be arguable merit to a claim that Fitzgerald received ineffective assistance of trial counsel. To prove that trial counsel rendered constitutionally ineffective assistance, a defendant must show that counsel's performance was deficient and that the deficient performance prejudiced the defendant. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984). We agree with the no-merit report's analysis of this issue and its conclusion that there are no grounds for arguing that Fitzgerald's trial counsel performed deficiently in representing her. There would be no arguable merit to this claim.

Our independent review of the record discloses no other potential issues for appeal. Accordingly, we accept the no-merit report, affirm the conviction, and discharge appellate counsel of the obligation to further represent Fitzgerald.

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

IT IS FURTHER ORDERED that Attorney Mark A. Schoenfeldt is relieved from further representing Sarah J. Fitzgerald. *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