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DISTRICT I

March 22, 2022

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Tifinee Leoni Love 339026
Robert E. Ellsworth Center
21425A Spring Street
Union Grove, WI 53182-9408

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

2021AP313-CRNM State of Wisconsin v. Tifinee Leoni Love (L.C. # 2019CF62)

Before Brash, C.J., Donald, P.J., and Dugan, J.

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).

Tifinee Leoni Love appeals from a judgment convicting her of second-degree reckless injury with the use of a dangerous weapon, as an act of domestic violence. Love also appeals from the order denying her postconviction motion for sentence modification. Her appellate counsel, David Malkus, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-

20)¹ and *Anders v. California*, 386 U.S. 738 (1967). Love received a copy of the report and was advised of her right to file a response, but did not do so. We have independently reviewed the record and the no-merit report as mandated by *Anders*. We conclude that there are no issues of arguable merit that could be pursued on appeal. We therefore summarily affirm.

The State originally charged Love with one count first-degree reckless injury with the use of a dangerous weapon, one count of misdemeanor bail jumping, and one count of disorderly conduct. The domestic abuse assessment was attached to each count. The charges stemmed from an incident in which Love struck L.B., the father of two of her children, with her vehicle. According to the complaint, Love was upset that L.B. impregnated another woman and followed him one day while he was running errands. Love attempted to strike L.B.'s vehicle with her own, but missed. When L.B. exited his vehicle, Love drove into him, causing significant injuries.

Love pled guilty to an amended charge of second-degree reckless injury with the use of a dangerous weapon, as an act of domestic violence. In exchange for the plea, the State agreed to dismiss and read in the bail jumping and disorderly conduct charge, as well as a charge in another case. Both parties remained free to argue at sentencing. The circuit court conducted a plea colloquy with Love, accepted her plea, and sentenced her to three years of initial confinement followed by four years of extended supervision.

Love later filed a postconviction motion for sentence modification asking the court to convert the remainder of her initial confinement into extended supervision. As grounds for the

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

request, Love argued that her high risk of mortality related to Covid-19 was a new factor that justified sentence modification. The postconviction court denied the motion.

The no-merit report addresses three issues: (1) whether Love's plea was knowing, voluntary, and intelligent; (2) whether the circuit court properly exercised its sentencing discretion; and (3) whether a challenge to the denial of Love's postconviction motion for sentence modification would have arguable merit.

Our review of the record—including the plea questionnaire and waiver of rights form, the jury instructions, and the plea hearing transcript—confirms that the circuit court complied with its obligations for taking guilty pleas, pursuant to WIS. STAT. § 971.08, *State v. Bangert*, 131 Wis. 2d 246, 261-62, 389 N.W.2d 12 (1986), and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. The circuit court's colloquy was thorough and the court confirmed with counsel that Love understood the terms of the plea and the proceedings. We agree with counsel that any challenge to the entry of Love's guilty plea would lack arguable merit.

With regard to the circuit court's sentencing decision, we note that sentencing is a matter for the circuit court's 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. See *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. It must also determine which objective or objectives are of greatest importance. See *Gallion*, 270 Wis. 2d 535, ¶41. In seeking to fulfill the sentencing objectives, the circuit court should consider several primary factors, including the gravity of the offense, the character of the

offender, and the protection of the public, as well as additional factors it may wish to consider. 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 *id.*

Our review of the record confirms that the circuit court appropriately considered relevant sentencing objectives and factors. The court was particularly concerned with the violent nature of the crime, the injuries L.B. suffered, and the fact that Love’s children witnessed the incident. However, the court also noted that Love was closely bonded with her children, complied with all of her pretrial requirements, took responsibility for her actions, and had a positive employment and educational history. The circuit court was thoughtful in rendering its decision, stating that it was “hard to balance” the gravity of the offense with the many positive aspects of Love’s character. The circuit court recognized the need to “send a message to the community that we cannot, absolutely, positively allow for people to run over their loved ones in the community and engage in such very reckless conduct.” The resulting sentence was within the potential maximum 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). Therefore, there would be no arguable merit to a challenge to the court’s sentencing discretion.

Finally, the no-merit report addresses whether a challenge to the denial of Love’s postconviction motion for sentence modification would have arguable merit. We agree it does not.

A motion for sentence modification based on a new factor must demonstrate the existence of a new factor by clear and convincing evidence. *State v. Harbor*, 2011 WI 28, ¶36,

333 Wis. 2d 53, 797 N.W.2d 828. A new factor is one that is “highly relevant to the imposition of sentence, but not known to the trial judge at the time of original sentencing, either because it was not then in existence or because, even though it was then in existence, it was unknowingly overlooked by all of the parties.” *Id.*, ¶40 (quoting *Rosado v. State*, 70 Wis. 2d 280, 288, 234 N.W.2d 69 (1975)).

The postconviction court stated that Love’s mortality risk was not a new factor warranting sentence modification, noting that Covid-19 vaccines were making their way to the prisons and that Love’s health was not highly relevant to the imposition of her sentence. The postconviction court also stated that even if Love’s mortality risk was a new factor, it did not justify sentence modification because the offense was “profoundly serious and violent” and modification would unduly depreciate the seriousness of the offense. We agree with appellate counsel that the postconviction court properly exercised its discretion and that there would be no arguable merit to the issue of sentence modification.

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

Upon the foregoing, therefore,

IT IS ORDERED that the judgment and order are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney David Malkus is relieved of further representation of Love 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