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DISTRICT II

June 22, 2022

To:

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Circuit Court Judge
Electronic Notice

Tara Berry
Clerk of Circuit Court
Winnebago County Courthouse
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Patricia A. Debauche, #699347
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You are hereby notified that the Court has entered the following opinion and order:

2021AP1708-CRNM State of Wisconsin v. Patricia A. Debauche (L.C. #2019CF323)

Before Gundrum, P.J., Grogan and Kornblum, 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).

Patricia A. Debauche appeals a judgment of conviction for second-degree sexual assault of a child, contrary to WIS. STAT. § 948.02(2) (2019-20).¹ Her appointed appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Debauche has filed a response. Upon consideration of the no-merit report and Debauche's response and following our independent review of the record as mandated by

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

Anders, we conclude there is no issue of arguable merit that could be raised on appeal. We therefore summarily affirm the judgment. *See* WIS. STAT. RULE 809.21(1).

Debauche was charged in a criminal complaint with first-degree sexual assault of a child under the age of thirteen and possession of child pornography. The criminal complaint alleged that officers responded to a report by Debauche of a mysterious assailant at her door who punched her in the face. Officers did not believe her injuries corresponded to her explanation, and Debauche then stated she did not want to make any more statements or press charges.

Shortly thereafter, police received information from Debauche's sister, who told police Debauche had said that her husband was trying to take her children and that she had touched the children inappropriately.² Debauche's sister later followed up with police and told them that after she had taken Debauche's children to her home and questioned them, Debauche called to tell her that she had molested the children with an ex-boyfriend while they were living in Pennsylvania. Debauche's mother also said that Debauche had admitted to abusing her children with the ex-boyfriend and that she had received a text message from Debauche wanting to sign over her rights to her children to her husband.

Based upon these reports, police began arranging interviews with the children. One of Debauche's children stated that he had been raped in Pennsylvania by Debauche's ex-boyfriend and that his mother knew what was occurring. Debauche's husband told police that the boy had recently told him of the sexual assaults, and Debauche had confirmed that there were

² The no-merit report represents that the individual was Debauche's husband, although the appellate record does not establish that the two were married. Nonetheless, we refer to the individual as Debauche's husband for purposes of this opinion.

pictures and video of the abuse in Pennsylvania. Officers were able to speak to Debauche at a family residence, where Debauche stated that her ex-boyfriend had repeatedly sexually assaulted her children and his children in a variety of ways and forced her to watch it.

The complaint further alleges that Debauche agreed to give a statement to police after being advised of her *Miranda* rights.³ Debauche stated that she moved to Pennsylvania in 2013, met her ex-boyfriend in 2014, engaged in a variety of sexual conduct with her children and her ex-boyfriend's children, and enjoyed it. After Debauche moved back to Wisconsin, she admitted that in May 2019 she had taken a video of herself masturbating next to her daughter while her daughter was sleeping, then touching her daughter's vagina after she had finished. She consented to allowing police to view this video. Debauche told police that sexual conduct with minors turns her on, that she preferred girls under the age of twelve, and that she had watched child pornography.

Pursuant to a plea agreement with the State, Debauche agreed to plead no contest to an amended charge of second-degree sexual assault of a child. The State also agreed that the child pornography count would be dismissed and read in, it would request a presentence investigation (PSI), and it would cap its sentencing recommendation at the lower of the PSI recommendation or five years' initial confinement and ten years' extended supervision. Following a thorough plea colloquy, the circuit court accepted Debauche's plea. At sentencing, the court stated it had

³ See *Miranda v. Arizona*, 384 U.S. 436 (1966).

reviewed the PSI, two counseling evaluations, and character letters on Debauche's behalf.⁴ The court ultimately sentenced Debauche to an eighteen-year prison term consisting of eight years' initial confinement and ten years' extended supervision.

The no-merit report addresses whether Debauche could raise nonfrivolous arguments related to: (1) the sufficiency of the plea colloquy; (2) whether her plea was knowing, intelligent, and voluntary; and (3) whether the circuit court properly exercised its sentencing discretion. Our review of the appellate record satisfies us that the no-merit report sufficiently analyzes these issues and properly concludes that any challenge based upon them would lack arguable merit. Our review of the appellate record discloses no other potentially meritorious issues for appeal.

In her response, Debauche writes that she intends not "to claim innocence, or make excuses for my choices, I am simply trying to give an [insight] into my behavior." Debauche acknowledges her wrongful conduct and creating the video and expresses regret for her decisions and the harm she has caused. We do not construe Debauche's response as alleging any flaw in the circuit court proceedings.

Nonetheless, we note Debauche's response states that what she said occurred in Pennsylvania were "extensive lies" that she told because she was fearful of what her husband

⁴ The PSI recommended a sentence consisting of nine or ten years' initial confinement and four years' extended supervision. At sentencing, the State recommended five years' initial confinement and ten years' extended supervision, a slightly longer total sentence than was recommended by the PSI but one with considerably less incarceration time. Accordingly, there is no arguable merit to any claim that the State breached the plea agreement at sentencing. See *State v. Williams*, 2002 WI 1, ¶38, 249 Wis. 2d 492, 637 N.W.2d 733 ("A material and substantial breach is a violation of the terms of the agreement that defeats the benefit for which the accused bargained.").

would do if she did not say what he wanted her to say. We note that to the extent Debauche would seek to raise an argument regarding the accuracy of the information before the sentencing court, the prosecutor informed the court that the Oshkosh Police Department and authorities in Pennsylvania conducted an investigation and determined that there was no veracity to Debauche's assertions about the sexual abuse that occurred in that state. Moreover, the circuit court's sentencing comments were clear that, though it did not know whether the allegations were true or false, either way the allegations did not reflect well on Debauche's character.

The court acknowledged the many mitigating circumstances, including Debauche's history of being abused, but it ultimately viewed Debauche as a "manipulative, lying, sexual predator." When pronouncing the sentence, the court stated, "I hold you to your word that you're a liar and I sentence you as a liar." As such, there is no basis to conclude the court relied on inaccurate information when it considered the uncorroborated Pennsylvania allegations.

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

IT IS FURTHER ORDERED that Attorney Frances Philomene Colbert is relieved from further representing Patricia A. Debauche in this appeal.

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

Sheila T. Reiff
Clerk of Court of Appeals