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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 II

March 8, 2023

To:

Hon. James G. Poulos
Circuit Court Judge
Electronic Notice

Sarah Adjemian
Clerk of Circuit Court
Washington County Courthouse
Electronic Notice

Mark Bensen
Electronic Notice

Vicki Zick
Electronic Notice

Dayna Marie Garrett
P.O. Box 1144
West Bend, WI 53095

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

2020AP1725-CRNM State of Wisconsin v. Dayna Marie Garrett (L.C. #2019CM1137)

Before Grogan, 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).

Dayna Marie Garrett appeals a judgment convicting her of one count of resisting or obstructing an officer. *See* WIS. STAT. § 946.41(1). Attorney Vicki Zick, as appointed counsel for Garrett, filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Counsel provided Garrett with a copy of the report, and both counsel and this court advised her of her right to file a response. Garrett has not responded. Upon consideration of the no-merit report and an independent review of the Record, this court

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2021-22). All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

concludes that this case is appropriate for summary disposition because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21. This court affirms.

Garrett pled no contest to one count of resisting or obstructing an officer contrary to WIS. STAT. § 946.41(1).² Pursuant to the plea deal, the State dismissed and read in one additional count. The circuit court imposed but stayed six months of jail time with Huber privileges, instead placing Garrett on probation for twelve months. The no-merit report addresses whether Garrett’s pleas were entered knowingly, voluntarily, and intelligently. The plea colloquy sufficiently complied with the requirements of *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906, and WIS. STAT. § 971.08 relating to the nature of the charge, the rights Garrett was waiving, the consequences of probation and revocation, and other matters. The Record shows no other ground to withdraw the plea. There is no arguable merit to this issue.

The no-merit report also addresses the validity of the sentence imposed. The sentence is within the legal maximum. *See* WIS. STAT. §§ 946.41(1) (classifying resisting or obstructing an officer as a Class A misdemeanor); 973.09(2)(a)1m (providing that the original term of probation for Class A misdemeanors shall be not less than six months nor more than one year). As to

² The judgment of conviction entered on February 17, 2020, incorrectly states that Garrett pled “Not Guilty” to Count One, resisting or obstructing an officer. However, the transcript of the plea hearing clearly and unambiguously reflects that Garrett entered a plea of “no contest” to Count One. Under *State v. Prihoda*, 2000 WI 123, ¶15, 239 Wis. 2d 244, 618 N.W.2d 857, this court may correct the judgment of conviction as a clerical error. “Correcting a clerical error in a judgment does not constitute a modification of that judgment; rather, it is simply a correction of the record to reflect the judgment the circuit court actually rendered.” *State v. Schwind*, 2019 WI 48, ¶30 n.5, 386 Wis. 2d 526, 926 N.W.2d 742. Accordingly, this court modifies the judgment of conviction to reflect that Garrett entered a plea of “no contest” to Count One and to conform the judgment to the plea and sentencing Record. All that remains is a mere defect in the judgment of conviction which may be corrected at any time at the direction of the circuit court, and no remand by this court is necessary. *See Prihoda*, 239 Wis. 2d 244, ¶¶17, 51.

discretionary issues, the standards for the circuit court and this court are well-established and need not be repeated here. *See State v. Gallion*, 2004 WI 42, ¶¶17-51, 270 Wis. 2d 535, 678 N.W.2d 197. In this case, the court considered appropriate factors, did not consider improper factors, and reached a reasonable result. There is no arguable merit to this issue.

This court's review of the Record discloses no other potential issues for appeal.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Vicki Zick is relieved from further representing Dayna Marie Garrett in this appeal. *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