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DISTRICT II

April 26, 2023

To:

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Circuit Court Judge
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Clerk of Circuit Court
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Autumn N.E. Erickson, #691014
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You are hereby notified that the Court has entered the following opinion and order:

2021AP3-CRNM State of Wisconsin v. Autumn N.E. Erickson (L.C. #2019CF220)

Before Gundrum, P.J., Neubauer and Lazar, 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).

Autumn N.E. Erickson appeals from a judgment of conviction entered upon her no-contest plea to possession with the intent to deliver three grams or less of methamphetamine. Her appointed appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22)¹ and *Anders v. California*, 386 U.S. 738, 744 (1967). Erickson received a copy of the report, was advised of her right to file a response, and has not done so. Upon consideration of

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

the no-merit report and an independent review of the record, we conclude that the judgment may be summarily affirmed because there are no arguably meritorious issues for appeal. *See* WIS. STAT. RULE 809.21.

While out on bail in a separate case, Erickson was arrested and charged in this case with possession with intent to deliver methamphetamine, possession of drug paraphernalia, and misdemeanor bail jumping. According to the criminal complaint, during a consent search of Erickson's car, police found methamphetamine, gem bags for packaging drugs, two digital scales (one with methamphetamine residue), pipes, and two loaded firearm magazines. She was arrested on March 28, 2019,² and released on cash bond on April 15, 2019. While out on bond, Erickson picked up additional felony cases. However, the instant matter, Manitowoc County Circuit Court case No. 2019CF220, is the only case reviewed in this no-merit appeal.

Pursuant to a negotiated settlement, Erickson pled no contest to count one, possession with intent to deliver methamphetamine, and the other two counts were dismissed and read in. The court set a date for sentencing and ordered a presentence investigation report. Ultimately, the court imposed a bifurcated sentence totaling four and one-half years, with eighteen months' initial confinement followed by three years' extended supervision. The court found Erickson eligible for both the Challenge Incarceration Program and the Substance Abuse Program. Regarding sentence credit, the court ordered the parties to submit their written positions within two weeks.

² Her arrest date is sometimes listed as March 29, 2019. The circuit court used the earlier date of March 28 to determine Erickson's sentence credit.

Erickson submitted a two-page letter to the circuit court seeking 335 days of sentence credit. The court determined that Erickson was entitled to eighteen days of sentence credit under WIS. STAT. § 973.155, and duly noted that on the judgment of conviction. This no-merit appeal follows.

Appellate counsel's no-merit report discusses the circuit court's sentence credit determination in detail, but does not adequately address whether there exists a potential non-frivolous challenge to the entry of Erickson's no-contest plea, or to the sentence imposed.³ Having conducted an independent review of the record, we conclude that no arguably meritorious issues arise from the entry of Erickson's plea, the imposition of her sentence, or the sentence credit award.

First, with regard to Erickson's no-contest plea, we conclude that the circuit court engaged in an appropriate plea colloquy and made the necessary advisements required by WIS. STAT. § 971.08(1)(a), *State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986), and *State v. Hampton*, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. *See also State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. Additionally, the court properly relied upon Erickson's signed plea questionnaire to establish her knowledge and understanding

³ In analyzing the entry of Erickson's plea, the no-merit report states: "The plea colloquy for the plea hearing of March 13, 2020 was adequately handled by the trial court [R49:3-6]." The no-merit report does not set forth the plea-taking court's mandatory duties, cite to relevant statutory or case law, or discuss how the court satisfied each of its duties at the plea hearing. This is insufficient to satisfy this court that appointed counsel carefully analyzed each potential plea-taking issue.

Similarly, when discussing the propriety of Erickson's sentence, the no-merit report states: "The sentence imposed by the court, although stricter than the presentence report recommendation, was well within the limits." There is no mention of the legal principles used by appointed counsel in reaching this conclusion.

of her plea. See *State v. Hoppe*, 2009 WI 41, ¶¶30-32, 317 Wis. 2d 161, 765 N.W.2d 794; *State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). We agree with counsel’s conclusion that no issue of arguable merit arises from the plea-taking procedures in this case.

Second, we conclude that no arguably meritorious issue arises from the sentencing proceedings in this case. On review, we afford the sentencing court a strong presumption of reasonability and we follow “a consistent and strong policy against interference with the discretion of the trial court in passing sentence.” *State v. Gallion*, 2004 WI 42, ¶18, 270 Wis. 2d 535, 678 N.W.2d 197. We will sustain a sentencing court’s reasonable exercise of discretion even if this court or another judge might have reached a different conclusion. *State v. Odom*, 2006 WI App 145, ¶8, 294 Wis. 2d 844, 720 N.W.2d 695.

Here, in fashioning the sentence, the circuit court considered the seriousness of the offense, the defendant’s character, and the need to protect the public. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The court acknowledged Erickson’s minimal record but expressed concern that she had accumulated numerous charges within one year’s time, including while she was in jail. The court determined that Erickson had “crossed the line from casual usage to addiction to criminal thinking.” It found that probation would unduly depreciate the offense, adding:

Clearly at this time although she has no criminal history, with this extensive amount of criminal behavior, this criminal thinking and the nature of the charges that a prison sentence on one of these charges at this time is warranted and appropriate.

The court imposed eighteen months of initial confinement, stating that this was “the least amount of time in prison to effectuate the sentencing criteria.” The court considered proper factors, did

not consider improper factors, and reached a reasonable and explainable decision with which we will not interfere.

The final issue discussed in appointed counsel's no-merit report is sentence credit. After sentencing, Erickson's trial counsel asked the circuit court for a total of 335 days of sentence credit. First, counsel sought 317 days of credit for the time that Erickson was in custody from July 9, 2019, (her arrest on new charges) to May 20, 2020, (the date of trial counsel's letter). The court denied that amount of sentence credit. Erickson also sought eighteen days of credit for the period from March 28, 2019, (her arrest in connection with this case), to April 15, 2019, (her release on bond in this case). That amount was granted to Erickson.

We agree with appellate counsel's analysis and conclusion that no issue of arguable merit arises from the circuit court's decision that Erickson was entitled to eighteen days of credit in connection with this case. The court correctly determined that Erickson was not entitled to sentence credit for time spent in custody in connection with other cases that were dismissed outright, rather than read in, at sentencing in the underlying case. *See State v. Floyd*, 2000 WI 14, ¶11, 232 Wis. 2d 767, 606 N.W.2d 155. Here, the bulk of Erickson's presentence custody was in connection with three cases that were dismissed outright, without prejudice.

Similarly, Erickson is not entitled to credit for time spent in custody in connection with the other cases to which she pled because, as the circuit court found, those cases did not arise out of same course of conduct as the instant circuit court case, No. 2019CF220. *See WIS. STAT. § 973.155(1)(b)* (permitting credit toward new charges for time spent in custody on a supervision hold that was "placed upon the person for the same course of conduct as that resulting in the new

conviction.”). We thus agree with appointed counsel that no arguably meritorious issue arises from the court’s sentence credit award.

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the conviction, and discharges appellate counsel of the obligation to further represent Erickson in this appeal. Therefore,

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

IT IS FURTHER ORDERED that Attorney Andrew H. Morgan is relieved from further representing Autumn N.E. Erickson in this appeal. 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