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DISTRICT II

July 19, 2023

To:

Hon. Mary Kay Wagner
Circuit Court Judge
Electronic Notice

Michael D. Graveley
District Attorney
Electronic Notice

Rebecca Matoska-Mentink
Clerk of Circuit Court
Kenosha County
Electronic Notice

Annice Kelly
Electronic Notice

Winn S. Collins
Electronic Notice

Kristin M. Heckel
2007 60th St., Upper
Kenosha, WI 53143

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

2021AP652-CRNM	State of Wisconsin v. Kristin M. Heckel (L.C. #2020CF453)
2021AP653-CRNM	State of Wisconsin v. Kristin M. Heckel (L.C. #2020CF528)

Before Gundrum, P.J., Grogan 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).

Kristin M. Heckel appeals from judgments convicting her of possession of methamphetamine second and subsequent offense as party to a crime and two counts of theft of movable property from an individual at risk. Her 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 (1967). Heckel received a copy of the report, was advised of her right to file a response, and has elected

¹ All references to the Wisconsin Statutes are to the 2021-2022 version.

not to do so. Upon consideration of the report and an independent review of the records, we conclude that the judgments may be summarily affirmed because there are no issues with arguable merit for appeal. *See* WIS. STAT. RULE 809.21.

In Kenosha County Circuit Court case No. 2020CF453, Heckel was driving with her boyfriend when officers stopped their vehicle. Officers observed an uncapped syringe and a clear plastic-bag corner piece inside the vehicle. Upon a subsequent search, officers found methamphetamine, hypodermic needles, a glass pipe, square foil pieces, several cell phones, and other drug paraphernalia.

In Kenosha County Circuit Court case No. 2020CF528, Heckel's mother reported that Heckel stole her wedding ring and used her debit and credit cards without her permission. Heckel's sister advised police that their mother was often confused and may be in the early stages of dementia or Alzheimer's disease.

In exchange for Heckel's pleas to possession of methamphetamine second and subsequent offense as party to a crime in case No. 2020CF453 and two counts of theft of movable property from an individual at risk in case No. 2020CF528, the State agreed to dismiss and read in the remaining charges² and recommend probation. Heckel pled guilty. The court sentenced her to one year and three months' initial confinement and two years' extended supervision on the possession of methamphetamine count; it withheld sentence in favor of two years' probation on the theft counts. The court explained that Heckel was addicted to drugs and

² The charges that were dismissed but read in included possession of drug paraphernalia as party to a crime and three additional counts of theft of movable property from an individual at risk.

“the best approach is for you to have some more time in custody with an opportunity at treatment.” These no-merit appeals follow.

The no-merit report addresses potential issues of whether Heckel’s pleas were knowingly, voluntarily, and intelligently entered, and whether the circuit court properly exercised its discretion at sentencing.

As to whether Heckel’s pleas were knowingly, voluntarily, and intelligently entered, during our independent review of the record, we observed that, at the plea hearing, the circuit court failed to personally inform Heckel that it was not bound by the parties’ plea agreement, as required by *State v. Hampton*, 2004 WI 107, ¶¶38, 42, 274 Wis. 2d 379, 683 N.W.2d 14. The record also indicated that the circuit court did not ascertain whether any threats or promises were made to Heckel in connection with her pleas or whether her pleas were voluntarily given. Based on these facts we observed that it may not be frivolous for Heckel to argue there was a plea colloquy defect. *See id.*, ¶¶38, 42. However, in order for Heckel to make a nonfrivolous claim for plea withdrawal, we observed that Heckel would need to allege that she did not know or understand the information that should have been provided. *See id.*, ¶46 (explaining a defendant may move to withdraw a plea by alleging that there was a plea colloquy defect *and* that the defendant did not know or understand the information that should have been provided). We therefore required counsel to file a supplemental no-merit report addressing this issue.

Counsel conferred with Heckel and submitted a letter to this court. By order dated June 12, 2023, we construed counsel’s letter to mean that Heckel was either not able or not interested in pursuing plea withdrawal on these bases. However, because the letter was not fully clear, we directed Heckel to clarify her position. We stated that if she did not respond within

twenty-one days, we would accept counsel's description of Heckel's position. Heckel has not responded. We therefore conclude there is no arguable merit to challenge the plea colloquy on this basis. *See Hampton*, 274 Wis. 2d 379, ¶¶38, 42. Our review of the record disclosed no other potential issues of arguable merit in regard to whether Heckel's pleas were knowing, voluntary, and intelligent.

With regard to the circuit court's sentencing discretion, our review of the record confirms that the court appropriately considered the relevant sentencing objectives and factors. *See State v. Odom*, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695; *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The resulting sentence was within the maximum authorized by law. *See State v. Scaccio*, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449. The sentence was 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, we agree with counsel there would be no arguable merit to a challenge to the court's sentencing discretion.

Our review of the record disclosed no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the judgments of conviction, and discharges appellate counsel of the obligation to represent Heckel further in these appeals.

IT IS ORDERED that the judgments of the circuit court are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Annice Kelly is relieved of further representation of Kristin M. Heckel in these appeals. *See* WIS. STAT. RULE 809.32(3).

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

Samuel A. Christensen
Clerk of Court of Appeals