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DISTRICT III

July 25, 2023

To:

Hon. Mark J. McGinnis
Circuit Court Judge
Electronic Notice

Barb Bocik
Clerk of Circuit Court
Outagamie County Courthouse
Electronic Notice

Winn S. Collins
Electronic Notice

Scott A. Szabrowicz
Electronic Notice

Ann M. Berry
1544 Manitowoc Road
Menasha, WI 54952

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

2021AP1230-CRNM State of Wisconsin v. Ann M. Berry (L. C. No. 2020CF223)

Before Stark, P.J., Hruz and Gill, 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).

Ann Berry appeals from a judgment convicting her of possession of methamphetamine, as a repeat offender. Attorney Scott Szabrowicz has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2021-22).¹ Berry was informed of her right to respond to the no-merit report, but she has not filed a response. Having independently reviewed the entire record as mandated by *Anders v. California*, 386 U.S. 738, 744 (1967), we conclude that there are no arguably meritorious issues for appeal.

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

Following a search of Berry's vehicle, the State charged Berry as a repeat offender with one count of possession of methamphetamine and one count of drug paraphernalia. Berry agreed to plead guilty to the methamphetamine count as a repeat offender in exchange for the dismissal as a read-in offense of the drug paraphernalia count and the State's recommendation of twenty-four months' probation with four months' conditional jail time imposed and stayed. The circuit court accepted Berry's plea after conducting a plea colloquy, reviewing her signed plea questionnaire, and ascertaining that there was a factual basis for the plea.

The circuit court proceeded directly to sentencing. After hearing from the parties, the court adjourned the hearing to have Berry take a drug test, which she agreed to do. However, Berry did not show up to take the drug test that day. At the continued hearing, Berry admitted that she had relapsed again and was afraid the drug test would be positive.

The circuit court explained that it wanted to be "realistic" in imposing a sentence that took into account Berry's addiction and mental health issues. Given her history of past failures on probation, the court was not persuaded that another term of probation would "do any good." The court concluded that a substantial period of incarceration was required to make sure that Berry became sober. The court did not, however, believe that the offense was serious enough to warrant a prison term. The court imposed an eight-month jail term, with six days of sentence credit.

The no-merit report addresses the validity of the plea and sentence. Upon reviewing the record, we agree with counsel's conclusion that Berry has no arguably meritorious basis to challenge either her plea or her sentence. In addition to the issues discussed by counsel, we note that Berry waived her right to personally appear at her plea and sentencing hearings and instead

appeared by videoconference in order to avoid delays caused by COVID restrictions that were then in effect. *See State v. Soto*, 2012 WI 93, ¶46, 343 Wis. 2d 43, 817 N.W.2d 848. We further note that Berry’s plea forfeited the right to raise other nonjurisdictional defects and defenses (with some exceptions not relevant here). *See State v. Kelty*, 2006 WI 101, ¶18 & n.11, 34, 294 Wis. 2d 62, 716 N.W.2d 886.

Our independent review of the record discloses no other potential issues for appeal. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders*. Accordingly, counsel shall be allowed to withdraw, and the judgment of conviction will be summarily affirmed. *See* WIS. STAT. RULE 809.21.

Upon the foregoing,

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

IT IS FURTHER ORDERED that Attorney Scott Szabrowicz is relieved of any further representation of Ann Berry in this matter pursuant to 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