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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  
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**DISTRICT II**

November 1, 2023

To:

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Circuit Court Judge  
Electronic Notice

Jennifer L. Vandermeuse  
Electronic Notice

Chris Koenig  
Clerk of Circuit Court  
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Nicole Lynn Karoses, #471053  
Robert Ellsworth Corr. Center  
21425-A Spring St.  
Union Grove, WI 53182-9408

Thomas J. Erickson  
Electronic Notice

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

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2021AP1879-CRNM      State of Wisconsin v. Nicole Lynn Karoses (L.C. #2018CF170)

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).**

Nicole Lynn Karoses appeals from a judgment of conviction and an order denying her postconviction motion for sentence modification. Her appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22)<sup>1</sup> and *Anders v. California*, 386 U.S. 738 (1967). Karoses filed a response to counsel's no-merit report. Counsel then filed a supplemental no-merit report, and Karoses filed an additional response. After reviewing the Record, counsel's

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

reports, and Karoses' responses, we conclude there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment and order. *See* WIS. STAT. RULE 809.21.

Karoses was convicted following a plea of no contest to first-degree reckless homicide as party to a crime. The charges stemmed from a drug transaction in which Karoses sold heroin that caused a man's overdose death. Four additional charges were dismissed and read in.<sup>2</sup>

For Karoses' role in the overdose death, the circuit court imposed an aggregate sentence of twelve years of initial confinement and six years of extended supervision. Karoses subsequently filed a postconviction motion in the circuit court seeking sentence modification. In it, she argued that there was a new factor that had been overlooked at sentencing—namely, that Karoses had cooperated with law enforcement during an interview by revealing where she had purchased the drugs that caused the overdose death. The court denied the postconviction motion, finding that Karoses' cooperation during her interview was neither highly relevant to the court's imposition of sentence nor a new factor justifying sentence modification. This no-merit appeal follows.

The no-merit reports address: (1) whether Karoses' plea was entered knowingly, voluntarily, and intelligently; (2) whether the circuit court properly exercised its discretion at sentencing; and (3) whether the circuit court properly exercised its discretion in denying the postconviction motion.

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<sup>2</sup> The dismissed and read-in charges were maintaining a drug trafficking place, possession of methamphetamine as party to a crime, possession of THC as a second or subsequent offense, and possession of drug paraphernalia as party to a crime.

First, we see no arguable basis for plea withdrawal. In order to withdraw a plea after sentencing, a defendant must either show that the plea colloquy was defective in a manner that resulted in the defendant actually entering an unknowing plea, or demonstrate some other manifest injustice such as coercion, the lack of a factual basis to support the charge, ineffective assistance of counsel, or failure by the prosecutor to fulfill the plea agreement. *State v. Bangert*, 131 Wis. 2d 246, 272-276, 389 N.W.2d 12 (1986); *State v. Krieger*, 163 Wis. 2d 241, 249-51 & n.6, 471 N.W.2d 599 (Ct. App. 1991). There is no indication of any such defect here.

Pursuant to a plea agreement, Karoses entered a plea of no contest to first-degree reckless homicide as party to a crime. The circuit court conducted a standard plea colloquy, inquiring into Karoses' ability to understand the proceedings and the voluntariness of her plea decision, and further exploring her understanding of the nature of the charge, the penalty range and other direct consequences of the plea, and the constitutional rights being waived. See *State v. Hoppe*, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794; and *Bangert*, 131 Wis. 2d at 266-72.

Karoses and her counsel both stated on the record that there was a factual basis for the plea, and there is nothing in the no-merit reports, the responses, or the record that leads us to conclude otherwise. The circuit court went to great lengths during the plea colloquy to ensure that there was a factual basis to support the plea, both in terms of the elements of reckless homicide and party to a crime. In addition, Karoses indicated satisfaction with her attorney and that counsel had satisfactorily responded to all Karoses' questions throughout the process. Nothing in our independent review of the record would support a claim that trial counsel rendered ineffective assistance. Karoses has not alleged any other facts that would give rise to a manifest injustice. Therefore, the plea was valid and operated to waive all nonjurisdictional

defects and defenses, aside from any suppression ruling.<sup>3</sup> See *State v. Kelty*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886.

In her response to counsel's no-merit report, Karoses asserts that she would not have entered her plea had she known that the circuit court could impose a sentence different than that contemplated in the plea agreement. However, the Record shows that Karoses knew, prior to entering her plea, that this was a possibility. The court made sure in conducting the plea colloquy that Karoses understood that it would not be bound by any sentencing recommendations. In addition, Karoses provided the court with a signed plea questionnaire. The signed plea questionnaire indicates that Karoses understood that the court, if it found it appropriate, could sentence Karoses up to the maximum penalties of forty years of imprisonment and a \$100,000 fine. Karoses indicated in the plea colloquy with the court that she understood the information explained on that form. See *State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). There is no arguable merit to a claim that Karoses' plea was not knowing, voluntary, or intelligent.

There also is no arguable merit to a claim that the circuit court improperly exercised its sentencing discretion. In imposing sentence, the court considered the seriousness of the offense, Karoses' character, and the need to protect the public. See *State v. Gallion*, 2004 WI 42, ¶¶40-44, 270 Wis. 2d 535, 678 N.W.2d 197. Karoses had the opportunity, through her counsel, to comment on the presentence investigation (PSI) ordered by the court and the alternate PSI

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<sup>3</sup> Karoses brought no suppression motion and nothing in the Record suggests any basis for suppression of any relevant evidence.

commissioned by trial counsel. She also had the opportunity to address the court directly, and did so prior to the court's imposition of sentence.

In her response to counsel's no-merit report, Karoses complains about the length of her sentence, arguing that other people in her situation have received shorter terms of confinement than Karoses did. The court imposed a sentence of twelve years of initial confinement and six years of extended supervision. Karoses faced a possible sentence of twenty-five years of initial confinement and fifteen years of extended supervision. *See* WIS. STAT. §§ 940.02(2)(a) (classifying first-degree reckless homicide as a Class C felony); 939.50(3)(c) (providing maximum penalties for a Class C felony); 973.01(2)(b)3. (providing maximum period of initial confinement for a Class C felony). Under the circumstances, it cannot reasonably be argued that Karoses' sentence is excessive, much less so excessive as to shock public sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Finally, the no-merit reports and Karoses' responses address whether the circuit court erroneously exercised its discretion in denying Karoses' postconviction motion for sentence modification. Karoses repeats the arguments she made in the circuit court, including her beliefs that her sentence was too harsh and her cooperation with law enforcement warrants a lighter sentence because it is a new factor that demonstrates her good character. Nothing in the no-merit reports, Karoses' responses, or our review of the Record provides a basis to conclude that the court erroneously exercised its discretion in denying Karoses' motion. The court's order effectively explains why Karoses' alleged new factor was either not "highly relevant to the imposition of sentence" or did not warrant sentence modification. *See State v. Harbor*, 2011 WI 28, ¶¶37, 40, 333 Wis. 2d 53, 797 N.W.2d 828 (citation omitted). Thus, we conclude that

there is no issue of arguable merit to any claim regarding the denial of Karoses' postconviction motion.

Upon our independent review of the Record, we have found no other arguable basis for reversing the judgment of conviction. *See State v. Allen*, 2010 WI 89, ¶¶81-82, 328 Wis. 2d 1, 786 N.W.2d 124. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32. Therefore,

IT IS ORDERED that the judgment and order are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Thomas J. Erickson is relieved from further representing Nicole Lynn Karoses in this appeal. *See* WIS. STAT. RULE 809.32(3).

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

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*