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DISTRICT II

December 13, 2023

To:

Hon. Jerilyn M. Dietz
Circuit Court Judge
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

April Higgins
Clerk of Circuit Court
Manitowoc County Courthouse
Electronic Notice

Bianca M. Bush, #691994
Robert Ellsworth Corr. Center
21425-A Spring St.
Union Grove, WI 53182-9408

Mark A. Schoenfeldt
Electronic Notice

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

2021AP1812-CRNM State of Wisconsin v. Bianca M. Bush (L.C. #2019CF311)

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).

Bianca M. Bush appeals a judgment convicting her of one count of child abuse—failure to act to prevent great bodily harm and one count of chronic neglect of a child. Appellate counsel, Mark A. Schoenfeldt, filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22),¹ and *Anders v. California*, 386 U.S. 738 (1967). Bush received a copy of the report, was advised of her right to file a response, and has not responded. We have independently

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

reviewed the Record and the no-merit report as mandated by *Anders*. We conclude that there are no issues of arguable merit that could be pursued on appeal. We therefore summarily affirm. See WIS. STAT. RULE 809.21.

On May 6, 2019, the State charged Bush with two counts of physical abuse of a child—repeated acts causing bodily harm; one count of physical abuse of a child—intentionally causing bodily harm; one count of chronic neglect of a child; one count of allowing a place of prostitution; one count of pandering; one count of possession of THC as a party to a crime; and one count of possession of drug paraphernalia as a party to a crime. Bush ultimately pled no contest to an amended charge of child abuse—failure to act to prevent great bodily harm (count one) and chronic neglect of a child (count four). The remaining charges were dismissed and read in. The circuit court conducted a colloquy with Bush and accepted her no contest pleas. The circuit court sentenced Bush to seven years of initial confinement followed by five years extended supervision on count one and a consecutive three-year term of probation on count four. This no-merit report follows.

Appellate counsel’s no-merit report addresses four issues: (1) whether Bush’s pleas were knowing, intelligent, and voluntary; (2) whether there was sufficient evidence to form a factual basis for Bush’s pleas; (3) whether the circuit court properly exercised its sentencing discretion; and (4) whether Bush’s counsel was ineffective.

As to the first issue, our review of the Record—including the plea questionnaire, the attachment, and the plea hearing transcript—confirms that the circuit court complied with its obligations for taking guilty pleas, pursuant to WIS. STAT. § 971.08, *State v. Bangert*, 131 Wis.2d 246, 261-62, 389 N.W.2d 12 (1986), and *State v. Brown*, 2006 WI 100, ¶35, 293

Wis. 2d 594, 716 N.W.2d 906. These obligations exist specifically to help ensure the validity of any plea. We thus agree with appellate counsel's conclusion in the no-merit report that there is no arguable merit to seeking plea withdrawal based on a claim that Bush's pleas were anything other than knowing, intelligent, and voluntary.

As to whether there was sufficient evidence to support a factual basis for Bush's pleas, we have independently reviewed the Record and agree with appellate counsel's description, analysis and conclusion that a challenge to the factual basis would lack arguable merit. Bush told the circuit court that she reviewed the criminal complaint with her counsel and that she agreed the facts in the complaint were substantially true and correct.

With regard to the circuit court's sentencing decision, we note that sentencing is a matter for the circuit court's discretion. *See State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. At sentencing, a court should consider the principal objectives of sentencing, including the protection of the community, the punishment and rehabilitation of the defendant, and deterrence to others. *See State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. It should also determine which objective or objectives are of greatest importance. *See Gallion*, 270 Wis. 2d 535, ¶41. In seeking to fulfill the sentencing objectives, the circuit court must consider several primary factors, including the gravity of the offense, the character of the offender, and the protection of the public, as well as additional factors it may wish to consider. *See State v. Odom*, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695. The weight to be given to each factor is committed to the circuit court's discretion. *See id.* The Record reveals that the court considered and applied the relevant sentencing factors, focusing specifically on the gravity of the offenses and Bush's character. The resulting sentence was within the potential maximum authorized by law, *see State v. Scaccio*, 2000 WI App 265, ¶18,

240 Wis. 2d 95, 622 N.W.2d 449, and is 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, a challenge to the court's sentencing discretion would lack arguable merit.

Lastly, appellate counsel addresses whether there would be arguable merit to a claim of ineffective assistance of counsel. To prevail on a claim of ineffective assistance of counsel, a defendant must show both that counsel's performance was deficient and that the deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687-694 (1984). Nothing in our independent review of the Record would support a claim that trial counsel rendered ineffective assistance.

Our independent review of the Record prompts us to address one other matter that the no-merit report does not discuss. Although the complaint properly identified the initial charges and the penalties that Bush initially faced, the court commissioner did not personally inform her of those penalties at the initial appearance. *See* WIS. STAT. § 970.02(1)(a); *see also State v. Thompson*, 2012 WI 90, ¶62, 342 Wis. 2d 674, 818 N.W.2d 904 (setting forth mandatory duties under § 970.02(1)(a), including: "In the case of a felony, the judge *shall* personally inform the defendant of the penalties for the felony or felonies with which the defendant is charged.") (emphasis in *Thompson*). There is no indication in the Record that Bush could make the requisite showing of prejudice based on this omission. *See id.*, ¶11 ("The prejudice determination [in this scenario] must satisfy the traditional standard for overcoming harmless error, that is, there must be a reasonable probability that the error contributed to the outcome of the action or the proceeding at issue."). In any event, entry of a valid guilty plea constitutes a waiver of nonjurisdictional defects and defenses. *See State v. Kelty*, 2006 WI 101, ¶18, 294

Wis. 2d 62, 716 N.W.2d 886. Consequently, there would be no arguable merit to a challenge on this basis.

Our independent review of the Record reveals no other potential issues of arguable merit.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Mark A. Schoenfeldt is relieved of further representation of Bianca M. Bush in this case 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