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DISTRICT III

December 19, 2023

To:

Hon. Thomas W. Clark
Circuit Court Judge
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

Michelle Weisenberger
Clerk of Circuit Court
Trempealeau County Courthouse
Electronic Notice

Linda M. Getter 188903
Taycheedah Correctional Inst.
P.O. Box 3100
Fond du Lac, WI 54936-3100

Thomas Brady Aquino
Electronic Notice

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

2022AP643-CRNM State of Wisconsin v. Linda M. Getter (L. C. No. 2018CF169)

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).

Counsel for Linda Getter has filed a no-merit report concluding that no grounds exist to challenge Getter's convictions for three counts of causing mental harm to a child, as a party to a crime. Getter has filed a response asserting her innocence. Upon our independent review of the record, as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude there is no

arguable merit to any issue that could be raised on appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21 (2021-22).¹

The State charged Getter with two counts of repeated sexual assault of a child and two counts of child enticement for the purpose of sexual contact, all four counts as a party to a crime. The criminal complaint alleged that in 1994 and 1995, Getter and her then-future-husband, Richard, sexually abused two children, when the children were approximately seven to nine and nine to eleven years old, respectively. According to the complaint, Getter was aware that Richard had repeatedly sexually assaulted the children, and Getter participated both directly and indirectly (such as by making the children drink alcohol). The complaint also alleged that Getter had sex with a third child.

At the outset of the criminal proceedings, the circuit court granted defense counsel's request for a competency examination and, following an examination, Getter was found competent to proceed. As part of a plea deal, the State filed an amended Information, replacing the two counts of child enticement with two counts of causing mental harm to a child, as a party to a crime. The amended Information also added one count of causing mental harm to the third child who was mentioned in the complaint. In exchange for Getter's no-contest pleas to the three counts of causing mental harm to a child, the State agreed to recommend that the court dismiss and read in the remaining counts. The parties remained free to argue at sentencing. Out of

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

maximum possible sentences totaling thirty years, the court imposed consecutive and concurrent terms resulting in indeterminate sentences totaling twenty years' imprisonment.²

Although the no-merit report does not specifically address it, we conclude there is no arguable merit to any claim that Getter was not competent to proceed. “No person who lacks substantial mental capacity to understand the proceedings or assist in his or her defense may be tried, convicted, or sentenced for the commission of an offense so long as the incapacity endures.” *State v. Byrge*, 2000 WI 101, ¶28, 237 Wis. 2d 197, 614 N.W.2d 477 (citation omitted). To determine legal competency, the circuit court considers a defendant's present mental capacity to understand and assist at the time of the proceedings. *Id.*, ¶¶30-31. A circuit court's competency determination should be reversed only when clearly erroneous. *Id.*, ¶46.

An examining psychologist submitted a report opining to a reasonable degree of medical certainty that Getter did not lack the substantial mental capacity to understand the circuit court proceedings or to assist in her defense, outlining the reasoning behind his opinion. At a subsequent hearing, Getter did not challenge the findings in the report and waived her right to an evidentiary hearing. The matter then proceeded with Getter's initial appearance.

The no-merit report addresses whether Getter knowingly, intelligently, and voluntarily entered her no-contest pleas and whether the circuit court properly exercised its sentencing discretion.³ Upon reviewing the record, we agree with counsel's description, analysis, and

² Because the offenses occurred in 1994 and 1995, the circuit court imposed indeterminate sentences. “Truth-in-sentencing” revisions were enacted in 1998 and are applicable to felonies committed on or after December 31, 1999. *See* 1997 Wis. Act 283, § 419.

³ In addition to the issues discussed by counsel, we note that Getter validly waived the right to personally appear at the plea and sentencing hearings and instead appeared by videoconference in order to
(continued)

conclusion that there is no arguable merit to these issues. The no-merit report sets forth an adequate discussion of the potential issues to support the no-merit conclusion, and we need not address them further.

In her response to the no-merit report, Getter suggests that if she had committed these crimes, one of the now-adult victims would not have allowed her to watch that victim's children. Getter also appears to question aspects of the victims' characterizations of events, as relayed in their statements to law enforcement and incorporated into both the criminal complaint and the presentence investigation report. Nothing in Getter's response would support a nonfrivolous challenge to her convictions or sentences. To the extent Getter intimates that she is innocent of the crimes for which she was convicted, Getter's valid no-contest pleas waived all nonjurisdictional defects and defenses. *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 issue for appeal.

Therefore,

IT IS ORDERED that the judgment is summarily affirmed. WIS. STAT. RULE 809.21.

avoid health risks caused by the COVID-19 pandemic. *See State v. Soto*, 2012 WI 93, ¶46, 343 Wis. 2d 43, 817 N.W.2d 848.

IT IS FURTHER ORDERED that Attorney Thomas Brady Aquino is relieved of his obligation to further represent Linda Getter in this matter. *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