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WISCONSIN COURT OF APPEALS

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
Web Site: www.wicourts.gov

DISTRICT I

March 5, 2024

To:

Hon. Rebecca A. Kiefer
Circuit Court Judge
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Jill Marie Skwor
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

Tyneshia S. Davis 713326
Robert E. Ellsworth Center
21425A Spring Street
Union Grove, WI 53182-9408

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

2023AP1245-CRNM State of Wisconsin v. Tyneshia S. Davis (L.C. # 2021CF2705)

Before Donald, P.J., Geenen and Colón, 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).

Tyneshia S. Davis appeals the judgment entered after she pled guilty to child abuse (intentionally causing bodily harm). Her appellate counsel, Jill Marie Skwor, filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22) and *Anders v. California*, 386 U.S. 738 (1967).¹ Davis filed a response. Upon consideration of the report, Davis's response, and an independent review of the record, as mandated by *Anders*, we conclude that the judgment may

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

be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

The State filed a complaint against Davis alleging that she physically abused T.D., her eight-year-old child. According to the complaint, during a forensic interview, T.D. told a police officer that Davis beat her with a belt. A medical examination revealed a number of looped and linear markings covering T.D.'s body. During a *Mirandized*² interview, Davis admitted hitting T.D. with a belt.

Pursuant to a plea agreement, Davis pled guilty to child abuse (intentionally causing bodily harm) and the State agreed to a deferred prosecution agreement (“DPA”). *See* WIS. STAT. § 971.37(5). In exchange for the State’s request that the court withhold entry of judgment for twelve months, Davis agreed to complete the following: a parenting program; an anger management program; a mental health evaluation; and an alcohol or drug abuse evaluation. Davis further agreed to follow through with the recommended treatment upon completion of the evaluations. In addition, Davis agreed to write a letter of apology to T.D. and to comply with the other terms of the DPA that was filed with the court. Upon successful completion of the DPA, the State would move to vacate the plea and dismiss the charge. The court confirmed with the parties that, in the event that the DPA failed, the State would move for entry of judgment and proceed with sentencing. Davis personally confirmed her understanding of the plea negotiations. The circuit court accepted the DPA.

² *See Miranda v. Arizona*, 384 U.S. 436 (1966).

The State subsequently revoked the DPA on grounds that Davis absconded with her children during a supervised visit, which violated the terms of the agreement. During the sentencing hearing that followed, the court emphasized Davis's lack of remorse for her actions. The court ordered her to serve a three-year sentence bifurcated as eighteen months of initial confinement and eighteen months of extended supervision. This no-merit appeal follows.

The no-merit report addresses whether there would be arguable merit to a claim that Davis's guilty plea was not knowingly, voluntarily, and intelligently entered. *See State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). Our review of the record and of counsel's analysis in the no-merit report satisfies us that the circuit court complied with its obligations for taking a guilty plea, pursuant to Wis. STAT. § 971.08, *Bangert*, 131 Wis. 2d at 261-62, and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. There would be no arguable merit to a claim that Davis's plea was not knowingly, intelligently, and voluntarily entered.

The no-merit report additionally addresses whether there would be arguable merit to a claim that the circuit court erroneously exercised its sentencing discretion. *See State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. At sentencing, a court must consider the principal objectives of sentencing, including the protection of the community, the punishment and rehabilitation of the defendant, and deterrence to others, *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76, and determine which objective or objectives are of greatest importance, *see Gallion*, 270 Wis. 2d 535, ¶41. The weight to be given to each factor is committed to the circuit court's discretion. *Ziegler*, 289 Wis. 2d 594, ¶23. We will sustain a circuit court's exercise of sentencing discretion if the sentence imposed was one that a reasonable judge might impose, even if this court or another judge might have imposed a

different sentence. *State v. Odom*, 2006 WI App 145, ¶8, 294 Wis. 2d 844, 720 N.W.2d 695. Our review of the record and counsel’s analysis in the no-merit report confirms that the circuit court appropriately considered relevant sentencing objectives and factors, and imposed a reasonable sentence. There would be no arguable merit to a challenge to the court’s sentencing discretion.

In her response, Davis challenges whether the underlying conduct was criminal in nature and opines that her actions amounted to discipline—not abuse. She also seems to challenge the circuit court’s determination at the preliminary hearing that there was probable cause to conclude a felony had been committed. However, by entering her valid guilty plea, Davis forfeited the right to raise any nonjurisdictional defects or defenses. *See generally State v. Kelty*, 2006 WI 101, ¶18 & n.11, 34, 294 Wis. 2d 62, 716 N.W.2d 886 (discussing the guilty plea waiver rule). This includes Davis’s right to challenge whether her actions amounted to reasonable discipline and the probable cause determination.

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the judgment, and discharges appellate counsel of the obligation to represent Davis further in this appeal.

Upon the foregoing, therefore,

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

IT IS FURTHER ORDERED that Attorney Jill Marie Skwor is relieved of further representation of Tyneshia S. Davis 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