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DISTRICT II

March 13, 2024

To:

Hon. Douglas R. Edelstein
Circuit Court Judge
Electronic Notice

Michelle Weber
Clerk of Circuit Court
Fond du Lac County Courthouse
Electronic Notice

Carlos Bailey
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

Julie A. Carter, #566112
Robert Ellsworth Corr. Center
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Union Grove, WI 53182-9408

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

2022AP1546-CRNM State of Wisconsin v. Julie A. Carter (L.C. #2021CF544)

Before Neubauer, 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).

Julie A. Carter appeals a judgment of conviction for felony bail jumping as a repeater. Appointed appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22)¹ and *Anders v. California*, 386 U.S. 738 (1967). Carter was advised of her right to file a response but has not done so. Upon consideration of the report and an independent review of the Record as mandated by *Anders* and RULE 809.32, we summarily affirm the judgment

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

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

Carter was initially charged with two counts of felony bail jumping and two counts of misdemeanor bail jumping, all as a repeater. Pursuant to a plea agreement, she pled no contest to one of the felony counts, and the remaining three counts were dismissed to be read in at sentencing. The circuit court imposed and stayed a six-month jail sentence, consecutive to a separate sentence the court had imposed in another case, and it placed Carter on probation for three years.

The no-merit report first addresses whether Carter's no-contest plea could be challenged because it was not knowing, intelligent, and voluntary. We agree with counsel that there is no arguable merit to this issue.

The circuit court conducted a plea colloquy with Carter that complied with WIS. STAT. § 971.08 and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906, with only one possible exception that could not support a non-frivolous claim for plea withdrawal. Although the court informed Carter that it could sentence her to the maximum, the court did not otherwise “[e]stablish personally that the defendant understands that the court is not bound by the terms of [the] plea agreement.” *See Brown*, 293 Wis. 2d 594, ¶35. However, the court did not deviate from any term of the plea agreement in this case. Accordingly, Carter could not pursue plea withdrawal based on an allegation that the court failed to establish personally that she understood that it was not bound by the agreement. *See State v. Johnson*, 2012 WI App 21, ¶¶12-13, 339 Wis. 2d 421, 811 N.W.2d 441 (explaining that the circuit court's failure to advise the defendant that the court was not bound by the plea agreement did not affect the validity of the

defendant's plea when the defendant received the benefit of the agreement). We see no other non-frivolous basis on which Carter might seek plea withdrawal.

The no-merit report next addresses whether the circuit court erroneously exercised its sentencing discretion. We agree with counsel that there is no arguable merit to this issue. The court considered the required sentencing factors along with other relevant factors. *See State v. Gallion*, 2004 WI 42, ¶¶37-49, 270 Wis. 2d 535, 678 N.W.2d 197. The court did not consider any improper factors. Carter's sentence was within the allowed maximum and could not be challenged as unduly harsh or so excessive as to shock public sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We see no other non-frivolous basis on which Carter might challenge her sentence.

Based upon our independent review of the Record, we have found no other arguable basis to pursue further appellate proceedings. 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 is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Carlos Bailey is relieved from further representing Julie A. Carter in this appeal. *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