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DISTRICT III

December 10, 2024

To:

Hon. James C. Babler
Circuit Court Judge
Electronic Notice

Sharon Millermon
Clerk of Circuit Court
Barron County Justice Center
Electronic Notice

Melissa M. Petersen
Electronic Notice

John Rafa Todd
Electronic Notice

Jasmine R. Hoisington
1611 1/2 Lynn Ave.
Altoona, WI 54720

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

2024AP757-CRNM State of Wisconsin v. Jasmine R. Hoisington
(L. C. No. 2021CM110)

Before Hruz, J.[1]

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 Jasmine R. Hoisington has filed a no-merit report pursuant to WIS. STAT. RULE 809.32, concluding that no grounds exist to challenge Hoisington's conviction for operating a motor vehicle while intoxicated (OWI), as a third offense. Hoisington was informed of her right to file a response to the no-merit report, but she has not responded. Pursuant to an order of this court, appellate counsel filed a supplemental no-merit report addressing several potential issues regarding Hoisington's guilty plea. Having reviewed the no-merit report and the

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2021-22). All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

supplemental no-merit report, and upon our independent review of the record as mandated by ***Anders v. California***, 386 U.S. 738 (1967), we conclude that 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.

The State charged Hoisington with second-offense OWI, operating a motor vehicle while revoked, and two counts of misdemeanor bail jumping. According to the criminal complaint, a law enforcement officer stopped Hoisington's vehicle for lack of registration. A check of Hoisington's driving record showed that her driver's license was revoked. During the traffic stop, the officer observed indicia of intoxication, and Hoisington subsequently failed field sobriety tests. Hoisington refused to perform a preliminary breath test but consented to an evidentiary chemical test of her blood. The State later filed an amended complaint adding a charge of operating a motor vehicle with a prohibited alcohol concentration, as a second offense, after a test of Hoisington's blood sample showed a blood alcohol concentration of .137. Both the complaint and the amended complaint alleged that Hoisington had one prior OWI conviction.

Hoisington moved to suppress, arguing that the officer who stopped her vehicle lacked reasonable suspicion to require her to perform field sobriety tests. Following an evidentiary hearing, the circuit court denied the motion, concluding that the officer's observations during the stop gave rise to reasonable suspicion that Hoisington was impaired, thus permitting the officer to conduct field sobriety tests.

After the circuit court orally denied Hoisington's suppression motion, the parties immediately resolved this case and two other pending cases, pursuant to a global plea agreement. The plea agreement provided that Hoisington would enter a guilty plea to second-offense OWI in

Barron County case No. 2021CT8, and the parties would jointly recommend twenty days in jail, a sixteen-month license revocation, a sixteen-month ignition interlock device (IID) requirement, and a $1,555 fine. In the instant case—Barron County case No. 2021CM110—Hoisington would plead guilty to an amended charge of third-offense OWI, and the parties would jointly recommend forty-five days in jail, consecutive to Hoisington's sentence in case No. 2021CT8, a twenty-four-month license revocation, a twenty-four-month IID requirement, and a $1,744 fine. In Barron County case No. 2021CM83, Hoisington would plead guilty to one count of misdemeanor bail jumping, with "a joint recommendation for costs."

Following a brief plea colloquy, supplemented by plea questionnaire and waiver of rights forms, the circuit court accepted Hoisington's guilty pleas, concluding that they were knowingly, intelligently, and voluntarily made. As relevant to this case, Hoisington conceded that the allegations in the complaint were substantially true and that, following her plea to second-offense OWI in case No. 2021CT8, she had two prior OWI convictions. Hoisington's attorney conceded that the complaint provided a factual basis for Hoisington's plea, and the court found that an adequate factual basis for the plea existed. The court dismissed and read in all of the other counts in this case. It then proceeded directly to sentencing and followed the parties' joint sentence recommendations in all three cases.

The no-merit report addresses: (1) whether the circuit court erred by denying Hoisington's suppression motion; (2) whether Hoisington's trial counsel was constitutionally ineffective by failing to pursue any other suppression motions; (3) whether Hoisington should be permitted to withdraw her guilty plea; and (4) whether the court erroneously exercised its sentencing discretion. We agree with appellate counsel's description, analysis, and conclusion that there are no issues of arguable merit regarding the denial of Hoisington's suppression

motion, trial counsel's failure to pursue any other suppression motions, and the court's exercise of its sentencing discretion. We therefore do not address those issues further.

With respect to Hoisington's guilty plea, upon our independent review of the record, this court identified several ways in which the circuit court failed to comply with its mandatory duties during the plea colloquy. Specifically, we noted that the court: (1) did not address Hoisington's education and general comprehension; (2) did not inform Hoisington of the elements of the offense, the maximum penalties, or the applicable mandatory minimum penalties; (3) did not inform Hoisington that it was not bound by the terms of the plea agreement; and (4) did not provide the required deportation warning. *See* ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. While the plea questionnaire and waiver of rights form for the instant case addressed these topics, a court may not "rely entirely on the Plea Questionnaire/Waiver of Rights Form as a substitute for a substantive in-court plea colloquy." *See* ***State v. Hoppe***, 2009 WI 41, ¶31, 317 Wis. 2d 161, 765 N.W.2d 794.

At our request, appellate counsel filed a supplemental no-merit report and supporting affidavit addressing these potential issues. Having reviewed those filings, we agree with appellate counsel that there are no arguable grounds to challenge Hoisington's guilty plea. To obtain a hearing on a motion for plea withdrawal based on a defect in the plea colloquy, a defendant must allege that he or she did not know or understand the information that should have been provided during the colloquy. ***Brown***, 293 Wis. 2d 594, ¶2. The representations in the supplemental no-merit report and counsel's affidavit show that Hoisington would be unable to allege the requisite lack of understanding.

First, with respect to Hoisington's education and general comprehension, appellate counsel asserts that she discussed this issue with Hoisington, and Hoisington confirmed "that her education was as stated on the plea questionnaire." The plea questionnaire stated that Hoisington was thirty-five years old and had completed twelve years of schooling. Given the additional information provided in the supplemental no-merit report, we agree with appellate counsel that a claim for plea withdrawal based on the circuit court's failure to address Hoisington's education and general comprehension during the plea colloquy would lack arguable merit.

Second, appellate counsel notes that the elements of the offense, the maximum penalties, and the applicable mandatory minimum penalties were addressed on the plea questionnaire. Appellate counsel further avers that she "discussed this issue with Ms. Hoisington[,] who confirmed going through the plea questionnaire with trial counsel prior to her plea." Appellate counsel also avers that she spoke with Hoisington's trial counsel, who "stated that he went over the plea questionnaire with Ms. Hoisington in its entirety while she was in the jail prior to the hearing." On this record, we agree with appellate counsel that there would be no arguable basis for Hoisington to claim that she did not know or understand the information that should have been provided during the plea colloquy regarding the elements of the offense and the applicable maximum and minimum penalties.

Third, while the circuit court did not inform Hoisington during the plea colloquy that it was not bound by the terms of the plea agreement, that information was also included on the plea questionnaire. Again, both Hoisington and her trial attorney confirmed to appellate counsel that they reviewed the plea questionnaire together prior to the plea hearing. In addition, Hoisington specifically told appellate counsel that she "knew the judge was not bound to a plea." Hoisington also confirmed that she "got the benefit of her plea bargain as the judge sentenced

her" consistent with the parties' joint recommendation. *See* ***State v. Johnson***, 2012 WI App 21, ¶14, 339 Wis. 2d 421, 811 N.W.2d 441 (concluding that the circuit court's failure to inform the defendant that it was not bound by the plea agreement was harmless error because the defendant received the benefit of the plea agreement). Consequently, any challenge to Hoisington's guilty plea based on the court's failure to inform her that it was not bound by the terms of the plea agreement would lack arguable merit.

Fourth, while the circuit court did not provide the deportation warning required by WIS. STAT. § 971.08(1)(c), according to the supplemental no-merit report, Hoisington has confirmed to appellate counsel that she is a United States citizen. The court's error in failing to provide the deportation warning was therefore harmless, as Hoisington cannot establish that her plea "is likely to result in [her] deportation, exclusion from admission to this country or denial of naturalization." *See* § 971.08(2); *see also* ***State v. Reyes Fuerte***, 2017 WI 104, ¶¶2-3, 378 Wis. 2d 504, 904 N.W.2d 773. As such, any challenge to the plea on this basis would lack arguable merit.

Our independent review of the record confirms that the circuit court otherwise adequately complied with its mandatory duties during the plea colloquy. In addition, our independent review of the record discloses no other potential issues for appeal.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Melissa M. Petersen is relieved of any further representation of Jasmine R. Hoisington 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