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DISTRICT II

January 16, 2013

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

2012AP2037-CRNM	State of Wisconsin v. Sonya Bunville (L.C. #2011CF860)
2012AP2038-CRNM	State of Wisconsin v. Sonya Bunville (L.C. #2011CF1267)

Before Brown, C.J., Neubauer, P.J. and Reilly, J.

Sonya Bunville appeals from judgments of conviction for possession of heroin as a second offense and felony bail jumping. Her appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2009-10),¹ and *Anders v. California*, 386 U.S. 738 (1967). Bunville received a copy of the report, was advised of her right to file a response, and has elected not to do so. Upon consideration of the report and an independent review of the records, we

¹ All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

conclude that the judgments may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* RULE 809.21.

Bunville was stopped walking along a street out of her known residential area and asked to identify herself. Bunville allowed the officer to search her purse and then her wallet. In her wallet eight syringes, a metal spoon, and a baggie corner of heroin was discovered. Bunville was charged with possession of heroin as a second offense and as a repeat offender.² While on bond for the offense, Bunville failed to appear at a court hearing. She was subsequently charged with two counts of felony bail jumping as a repeat offender.

A plea agreement was reached. Bunville pled no contest to possession of heroin as a second offense and bail jumping. The repeat offender penalty enhancer was dropped in both cases, and the second bail jumping charge was dismissed as a read-in at sentencing. The prosecution agreed to cap its sentencing recommendation to concurrent terms of eighteen months' initial confinement and eighteen months' extended supervision. Bunville was sentenced to concurrent terms of eighteen months' initial confinement and eighteen months' extended supervision.

The no-merit report addresses only whether there is arguable merit to a claim that the sentences were an erroneous exercise of discretion. The report explains that sentencing was the only issue Bunville raised with counsel. It is not enough for a no-merit report to address only issues the defendant has raised with counsel. Counsel has a duty to review the entire record for

² Different and distinct convictions were the basis for charging Bunville with the two penalty enhancers. Charging the two enhancers was permissible. *See State v. Delaney*, 2003 WI 9, ¶32, 259 Wis. 2d 77, 658 N.W.2d 416.

potential appellate issues. A no-merit report serves to demonstrate to the court that counsel has discharged his or her duty of representation competently and professionally and that the indigent defendant is receiving the same type and level of assistance as would a paying client under similar circumstances. *See McCoy v. Wisconsin Court of Appeals*, 486 U.S. 429, 438 (1988).

Here the no-merit report is incomplete because it does not discuss whether any issues of arguable merit arise from the plea taking. We have examined the plea colloquy to determine whether Bunville's no-contest pleas were knowingly, intelligently and voluntarily entered. *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906, summarizes the judge's duties during the plea colloquy. During the plea hearing the circuit court fulfilled each of those duties. Additionally the court addressed with Bunville the read-in offense. *See State v. Straszkowski*, 2008 WI 65, ¶5, 310 Wis. 2d 259, 750 N.W.2d 835 (a trial court should advise defendants of the effects of read-in charges). The court made a point of asking Bunville whether she had discussed with trial counsel documentation and discovery material related to the cases and whether Bunville came to a tactical decision not to pursue or file pretrial motions. Bunville confirmed that she had decided not to file pretrial motions.³ No issue of merit exists from the plea taking.

With respect to the sentences, we agree with the no-merit report's conclusion that the sentencing court relied on the facts of record and appropriate considerations and adequately explained the need to protect the public and provide for Bunville's rehabilitation as the

³ Even if a meritorious challenge could be mounted against the basis for stopping Bunville to conduct the consensual search, Bunville explicitly forfeited her right to do so. Any other possible appellate issues are waived because the defendant's no-contest plea waived the right to raise nonjurisdictional defects and defenses, including claimed violations of constitutional rights. *State v. Lasky*, 2002 WI App 126, ¶11, 254 Wis. 2d 789, 646 N.W.2d 53.

objectives of the sentences. *See State v. Gallion*, 2004 WI 42, ¶¶40, 41, 270 Wis. 2d 535, 678 N.W.2d 197 (the basic objectives of the sentence include the protection of the community, punishment of the defendant, rehabilitation of the defendant, and deterrence to others and the court is to identify the general objective of most import). Additionally, the sentences are well within the applicable maximum and cannot be considered excessive. *See State v. Daniels*, 117 Wis. 2d 9, 22, 343 N.W.2d 411 (Ct. App. 1983) (“A sentence well within the limits of the maximum sentence is not so disproportionate to the offense committed as to shock the public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances.”). No issue of merit exists with regard to the length of the sentences.

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

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Jeffrey J. Guerard is relieved from further representing Sonya Bunville in these appeals. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals