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January 16, 2013

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

2012AP1686-CRNM State of Wisconsin v. Angela B. Stott (L.C. #2011CF69)

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

Angela B. Stott appeals from a judgment of conviction for two counts of theft by false representation of property valued at more than \$10,000. 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). Stott 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

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

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

Stott operated a daycare facility. She received payments from the State of Wisconsin for children enrolled in the daycare facility and qualified for public funded daycare under the Wisconsin Shares program. A jury determined that Stott had submitted attendance records for children of several daycare employees when the children did not actually participate at the daycare. Stott was sentenced to concurrent terms of thirty months' initial confinement and sixty months' extended supervision. She was also ordered to pay restitution of \$355,000 at a rate of \$150 per month when released on extended supervision.

The no-merit report only addresses whether there was sufficient credible evidence to support the guilty verdicts. As stated in the report, our standard of review to determine whether the evidence was sufficient to support the conviction is that "an appellate court may not substitute its judgment for that of the trier of fact unless the evidence, viewed most favorably to the [S]tate and the conviction, is so [insufficient] in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt." *State v. Hayes*, 2004 WI 80, ¶56, 273 Wis. 2d 1, 681 N.W.2d 203 (citation omitted). The report discusses the evidence in relation to the seven elements of the crime of theft by false representation. We have reviewed the trial transcripts and determined that the testimony of the seven former daycare employees and parents of children enrolled but not attending the daycare was sufficient to satisfy the elements. That the amount of money falsely paid exceeded \$10,000 was established. There is no arguable merit to a claim that the evidence was insufficient.

The no-merit report fails to reflect that appointed appellate counsel considered other potential issues that arise in cases tried to a jury, *i.e.*, jury selection, evidentiary objections during trial, confirmation that the defendant's election to testify is knowingly made or waiver of the right to testify is valid, use of proper jury instructions, and propriety of opening and closing arguments. It is important that the no-merit report provides a basis for a determination that the no-merit procedure has been complied with. *See State v Allen*, 2010 WI 89, ¶¶58, 61-62, 72, 328 Wis. 2d 1, 786 N.W.2d 124 (when an issue is not raised in the no-merit report, it is presumed to have been reviewed and resolved against the defendant so long as the Court of Appeals follows the no-merit procedure). We address the potential issues not mentioned in the no-merit report to demonstrate that the no-merit procedure has been followed. *See id.*, ¶82 (difficult to know the nature and extent of the Court of Appeals' examination of the record when the court does not enumerate possible issues that it reviewed and rejected in its no-merit opinion).

Our review of the trial record discloses no issues of arguable merit. The rulings made on the motions in limine were proper. There is no basis to challenge jury selection. Evidentiary objections throughout the trial were properly ruled on and no potentially objectionable testimony was elicited. The trial court conducted a proper colloquy with Stott about her waiver of the right to testify. The jury instructions accurately conveyed the applicable law and burden of proof. No improper arguments were made to the jury.

We have also considered whether there is arguable merit to a claim that the sentence was the result of an erroneous exercise of discretion.² Sentencing is left to the discretion of the trial

² The no-merit report does not discuss this potential issue.

court and appellate review is limited to determining whether there was an erroneous exercise of discretion. *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. When the proper exercise of discretion has been demonstrated at sentencing, appellate courts have a strong policy against interference with that discretion and the sentencing court is presumed to have acted reasonably. *Id.*, ¶18. An erroneous exercise of discretion occurs when a sentence is based on irrelevant or improper factors. *Id.*, ¶17. In addition, the trial court must specify the objectives of the sentence on the record, which “include, but are not limited to, the protection of the community, punishment of the defendant, rehabilitation of the defendant, and deterrence [of] others.” *Id.*, ¶40.

The trial court adequately discussed the facts and factors relevant to sentencing Stott, and properly exercised its discretion. It recognized Stott’s cooperation by turning herself in to authorities upon becoming aware of the outstanding arrest warrant and appearing for all court appearances by bus travel from her home in Tennessee. It found the crimes to be serious in light of the amount of money falsely paid and the disservice done to the goals of the Wisconsin Shares program. It identified the need for deterrence and punishment as the objectives of the sentence. The court found that in light of Stott’s job skills she would have the ability to make the required payments of restitution. Additionally, each sentence is well-within the ten-year 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.”).

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

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Tonya N. Turchik is relieved from further representing Angela B. Stott in this appeal. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals