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DISTRICT II

April 3, 2013

To:

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Circuit Court Judge
Kenosha County Courthouse
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Kenosha, WI 53140

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

2012AP945-CRNM State of Wisconsin v. Caitlin A. Buck (L.C. # 2009CF1334)

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

Caitlin A. Buck appeals from a judgment convicting her of causing injury by use of a vehicle while having a prohibited alcohol concentration and an order denying her motion to vacate the DNA surcharge. Buck's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2011-12)¹ and *Anders v. California*, 386 U.S. 738 (1967). Buck received a copy of the report, was advised of her right to file a response, and has elected not to do so. After

¹ All references to the Wisconsin Statutes are to the 2011-12 version.

reviewing the record and counsel's report, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment and order. *See* WIS. STAT. RULE 809.21.

The no-merit report addresses the following appellate issues: (1) whether Buck's plea of no contest was knowingly, intelligently, and voluntarily entered; (2) whether the circuit court erroneously exercised its discretion at sentencing; and (3) whether the circuit court erred when it denied Buck's motion to vacate the DNA surcharge ordered at sentencing.

With respect to the entry of the no contest plea, the record shows that the circuit court engaged in a colloquy with Buck that satisfied the requirements of WIS. STAT. § 971.08(1)(a), *State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986), and *State v. Hampton*, 2004 WI 107, ¶¶33, 38, 274 Wis. 2d 379, 683 N.W.2d 14.² In addition, a signed plea questionnaire and waiver of rights form was entered into the record. We agree with counsel that any challenge to the entry of Buck's no contest plea would lack arguable merit.

With respect to the sentencing hearing, the record reveals that the circuit court's decision had a "rational and explainable basis." *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197. In withholding sentence and ordering Buck to complete five years of probation with ninety days of conditional jail time, the court considered the seriousness of the offense, Buck's character, and the need to protect the public. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Under the circumstances of the case, which were aggravated by

the impact the accident had on the victim and his family, the court's decision does not "shock public sentiment and violate the judgment of reasonable people concerning what is right and proper." *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). Accordingly, we agree with counsel that a challenge to the circuit court's decision at sentencing would lack arguable merit.

Finally, with respect to Buck's motion to vacate the DNA surcharge, the record demonstrates that the circuit court properly denied it. At the hearing on Buck's motion, the court explained that it had decided at sentencing that Buck would be able to pay restitution in the amount of \$63,000. Given this determination, the court wanted Buck to pay the \$250 DNA surcharge rather than force the cost upon the public. Accordingly, the court denied Buck's motion to vacate the surcharge. This court is satisfied that the no-merit report properly analyzes this issue as without merit, and this court will not discuss it further.

Our independent review of the record does not disclose any potentially meritorious issue for appeal. Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report and relieve Attorney Paul G. Bonneson of further representation in this matter.

Upon the foregoing reasons,

² There is one exception to this. The circuit court failed to provide the deportation warning required by WIS. STAT. § 971.08(1)(c). This failure does not present a potentially meritorious issue for appeal, however, as there is no indication that Buck's plea is likely to result in her deportation, exclusion from admission to this country, or denial of naturalization. Sec. 971.08(2).

IT IS ORDERED that the judgment and order of the circuit court are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Paul G. Bonneson is relieved of further representation of Buck in this matter.

Diane M. Fremgen
Clerk of Court of Appeals