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DISTRICT III

January 20, 2016

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

2015AP351-CRNM State of Wisconsin v. Brittany M. Mefford (L. C. No. 2013CF295)

Before Stark, P.J., Hruz and Seidl, JJ.

Counsel for Brittany Mefford has filed a no-merit report concluding there is no arguable basis for Mefford to challenge her conviction and sentence for first-degree reckless homicide as a party to a crime. WIS. STAT. § 940.02(2)(a) (2013-14). Mefford was advised of her right to respond to the report and has not responded. Upon our independent review of the record as mandated by ***Anders v. California***, 386 U.S. 738 (1967), we conclude there is no arguable basis for appeal.

The record discloses no arguable basis for Mefford to challenge the sufficiency of the evidence to support the jury's verdict. The autopsy doctor testified the victim died of polysubstance toxicity, and heroin was a substantial factor causing his death. Several of the State's witnesses who participated in the heroin sale testified to Mefford's role as a "middler," that is, a person who obtains heroin for the user by virtue of his or her connection to the source. In addition, after being advised of her ***Miranda***[1] rights, Mefford made recorded and written statements for police detailing her role in obtaining the heroin. After being appropriately advised of her right to testify, Mefford did not testify, and the defense presented no witnesses. The primary defense argument suggested lack of proof that the victim died from injecting the heroin Mefford supplied. However, the jury could reasonably infer his death was caused by the heroin Mefford delivered less than ten hours before his death.

In a postconviction motion, Mefford alleged ineffective assistance of trial counsel based on her attorney's failure to play for her the video recording of her incriminatory interview with the police. Mefford contends she would have been embarrassed to have the jury see the condition she was in, and therefore she would have accepted the State's plea offer of three years' initial confinement and seven years' extended supervision. At the postconviction hearing, her trial counsel testified he went to the jail to review the recording with Mefford, and Mefford refused to watch it. The circuit court found counsel's testimony more credible than Mefford's. As the arbiter of the witnesses' credibility, the circuit court was free to reject Mefford's self-serving testimony. *See* ***State v. Ayala***, 2011 WI App 6, ¶10, 331 Wis. 2d 171, 793 N.W.2d 511.

[1] ***Miranda v. Arizona***, 384 U.S. 436 (1966).

The record also discloses no arguable basis for challenging the sentencing court's discretion. The court sentenced Mefford to six years' initial confinement and seven years' extended supervision. The court could have imposed a sentence of forty years' imprisonment and a $100,000 fine. The court appropriately considered the seriousness of the offense, Mefford's character and the need to protect the public. *See* ***State v. Harris***, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). The court considered no improper factors, and the sentence it imposed is not arguably so excessive as to shock public sentiment. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Our independent review of the record discloses no other potential issue for appeal. Therefore,

IT IS ORDERED that the judgment and order are summarily affirmed. WIS. STAT. RULE 809.21 (2013-14).

IT IS FURTHER ORDERED that attorney Ralph Sczygelski is relieved of his obligation to further represent Mefford in this matter. WIS. STAT. RULE 809.32(3) (2013-14).

Diane M. Fremgen
Clerk of Court of Appeals