



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

(Amended as to last paragraph September 21, 2016)
August 24, 2016

To:

Hon. Jeffrey S. Froehlich
Circuit Court Judge
206 Court St.
Chilton, WI 53014

Timothy T. O'Connell
O'Connell Law Office
403 S. Jefferson St.
Green Bay, WI 54301

Connie Daun
Clerk of Circuit Court
Calumet County Courthouse
206 Court St.
Chilton, WI 53014

Criminal Appeals Unit
P.O. Box 7857
Madison, WI 53707-7857

Nicholas W. Bolz
District Attorney
206 Court St.
Chilton, WI 53014

Renae R. Allison
5711 Boulder Cir.
Wisconsin Rapids, WI 54494

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

2016AP721-CRNM State of Wisconsin v. Renae R. Allison (L.C. #2014CT105)

Before Hagedorn, J.¹

Renae R. Allison was stopped for erratic driving. She failed several field sobriety tests, and a blood test revealed the presence of nordiazepam. Allison appeals the judgment convicting

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

her of third-offense operating while intoxicated.² Pursuant to a plea agreement, she pled no contest and, consistent with the parties' joint recommendation, was sentenced to the minimum penalty of forty-five days in jail with Huber privileges.

Appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967), concluding that no grounds exist to challenge the judgment of conviction. Allison was notified of her right to file a response but has not. Upon consideration of the no-merit report and an independent review of the record as mandated by *Anders* and RULE 809.32, we conclude there is no arguable merit to any issue that could be raised on appeal. We summarily affirm the judgment. *See* WIS. STAT. RULE 809.21.

The no-merit report first considers whether Allison's plea was not knowingly, intelligently, and voluntarily entered, thus permitting her to withdraw it. This court agrees that no issue of arguable merit could be sustained on this point.

A defendant seeking to withdraw a no-contest plea after sentencing bears "the heavy burden of establishing, by clear and convincing evidence, that plea withdrawal is necessary to correct a manifest injustice." *See State v. McCallum*, 208 Wis. 2d 463, 473, 561 N.W.2d 707 (1997). WISCONSIN STAT. § 971.08 obligates the circuit court to ensure that the defendant understands the essential elements of the charge to which he or she is pleading, the potential

² Allison was charged with and convicted of a violation of WIS. STAT. § 346.63(1)(a), "Operating under influence of intoxicant or other drug." While the original and amended complaints and the judgment of conviction recite "under the influence of an intoxicant," the record is clear that Allison, the State, and the court understood that the "other drug" language applied, as she takes prescription medications for mental health conditions. "No ... complaint ... shall be invalid, nor shall the trial, judgment or other proceedings be affected by reason of any defect or imperfection in matters of form which do not prejudice the defendant." WIS. STAT. § 971.26.

punishment for the charge, and the constitutional rights being given up. *State v. Bangert*, 131 Wis. 2d 246, 260-262, 389 N.W.2d 12, 20-21 (1986). The defendant must make a prima facie case that the circuit court did not comply with the procedural requirements of § 971.08 and that he or she did not understand or know the information that should have been provided. *See Bangert*, 131 Wis. 2d at 274. No issue of arguable merit could arise from this point.

Besides the thorough colloquy, the court properly looked to Allison's signed plea questionnaire/waiver of rights form, expressing her understanding of the elements of the crime, the potential penalties, and the rights she agreed to waive; she orally reiterated her understanding under questioning by the court. *See State v. Hoppe*, 2009 WI 41, ¶¶30-32, 317 Wis. 2d 161, 765 N.W.2d 794. The elements were spelled out on a separate sheet attached to the plea questionnaire. She said she was fifty-four years old with sixteen years' education, demonstrated no confusion about the rights she was relinquishing, and confirmed her understanding that the court was not bound by any sentencing recommendation. She asserts no claim, and we discern no basis for one, that she was denied the effective assistance of counsel leading up to and during the plea taking so as to establish a "manifest injustice." *See State v. Rock*, 92 Wis. 2d 554, 558-59, 285 N.W.2d 739 (1979).

The no-merit report also considers whether the circuit court properly exercised its discretion at sentencing. To properly exercise its discretion, a circuit court must provide a rational and explainable basis for the sentence. *State v. Gallion*, 2004 WI 42, ¶39, 270 Wis. 2d 535, 678 N.W.2d 197. The court "must consider three primary factors in determining an appropriate sentence: the gravity of the offense, the character of the defendant, and the need to protect the public." *State v. Harris*, 2010 WI 79, ¶28, 326 Wis. 2d 685, 786 N.W.2d 409.

While the court did not expressly articulate the factors considered in formulating Allison's sentence, our review of the record satisfies us that the court applied the proper sentencing factors in a reasoned and reasonable manner. It took into account that the medications in Allison's system were prescribed for her mental health issues, considered personal difficulties in her life, but warned her that impaired driving, whatever the reason, can have tragic results and cannot be condoned.

We assess whether Allison's forty-five-day sentence is unduly harsh. It cannot be, as the court imposed the statutory minimum sentence. Beyond that, the court granted the parties' joint recommendation. She cannot challenge a sentence to which she agreed. *See State v. Scherreiks*, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989). Finally, the court ordered that she serve her sentence in another county nearer to her support system and treating physician. No basis exists to disturb the sentence imposed.

Our independent review reveals no other meritorious issues.

For the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Timothy T. O'Connell is relieved of further representing Allison in this matter.

Diane M. Fremgen
Clerk of Court of Appeals