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 IV

August 31, 2016

To:

Hon. Nicholas McNamara
Circuit Court Judge
Br. 5
215 South Hamilton
Madison, WI 53703

Ismael R. Ozanne
District Attorney
Rm. 3000
215 South Hamilton
Madison, WI 53703

Carlo Esqueda
Clerk of Circuit Court
Room 1000
215 South Hamilton
Madison, WI 53703

Gregory M. Weber
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Robert C. Howard III
Howard Law Office
Ste. 200
215 W. Court Street
Janesville, WI 53548-3805

Diana F. Walker
2218 Allied Drive, Apt. 3
Madison, WI 53711-4539

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

2014AP1013-CRNM State of Wisconsin v. Diana F. Walker (L.C. # 2012CF2082)
2014AP1014-CRNM State of Wisconsin v. Diana F. Walker (L.C. # 2013CF725)

Before Kloppenburg, P.J., Lundsten and Blanchard, JJ.

Diana Walker appeals related felony judgments convicting her of substantial battery with use of a dangerous weapon and bail jumping.[1] Attorney Robert Howard has filed a no-merit report seeking to withdraw as appellate counsel. WIS. STAT. RULE 809.32 (2013-14);[2] *see also*

[1] There was an additional judgment on a misdemeanor charge that has not been appealed.

[2] All further references in this order to the Wisconsin Statutes are to the 2013-14 version, unless otherwise noted.

Anders v. California, 386 U.S. 738, 744 (1967); ***State ex rel. McCoy v. Wisconsin Court of Appeals***, 137 Wis. 2d 90, 403 N.W.2d 449 (1987), *aff'd*, 486 U.S. 429 (1988). The no-merit report addresses Walker's pleas and sentences and the efficacy of counsel's performance. Walker was sent a copy of the report, but has not filed a response. Upon reviewing the entire record, as well as the no-merit report, we conclude that there are no arguably meritorious appellate issues.

First, we see no arguable basis for plea withdrawal. In order to withdraw a plea after sentencing, a defendant must either show that the plea colloquy was defective in a manner that resulted in the defendant actually entering an unknowing plea, or demonstrate some other manifest injustice such as coercion, the lack of a factual basis to support the charge, ineffective assistance of counsel, or failure by the prosecutor to fulfill the plea agreement. ***State v. Bangert***, 131 Wis. 2d 246, 389 N.W.2d 12 (1986); ***State v. Krieger***, 163 Wis. 2d 241, 249-51 and n.6, 471 N.W.2d 599 (Ct. App. 1991). There is no indication of any such defect here.

Walker entered guilty pleas to the two felony charges and a related misdemeanor charge pursuant to a negotiated plea agreement that was presented in open court. In exchange for Walker's pleas, the State agreed to dismiss several other charges, and to make a joint sentencing recommendation for withheld sentences subject to three years of probation on the felony counts.

After advising Walker of the nature of the charges, the penalty ranges, and the consequences of the pleas, the circuit court conducted a brief plea colloquy inquiring into Walker's ability to understand the proceedings and the voluntariness of her plea decisions. *See* WIS. STAT. § 971.08; ***State v. Hoppe***, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794; ***Bangert***, 131 Wis. 2d at 266-72. The court made sure Walker understood that it would not be

bound by any sentencing recommendations. In addition, Walker provided the court with a signed plea questionnaire. Walker indicated to the court that she understood the constitutional rights explained on that form, and is not now claiming otherwise. *See* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987).

The facts set forth in the complaints—namely, that Walker had gotten into a physical fight with another woman, during which she hit her in the face with a crutch and broke her glasses in half with her hands, and that she subsequently used heroin while out on bond—provided a sufficient factual basis for the pleas.

We see nothing in the record or the no-merit report to suggest that counsel's performance was in any way deficient, or any other facts that would give rise to a manifest injustice. The plea agreement negotiated by counsel significantly reduced Walker's sentence exposure. Therefore, Walker's pleas were valid and operated to waive all nonjurisdictional defects and defenses. ***State v. Kelty***, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886.

A challenge to Walker's sentences would also lack arguable merit because the circuit court followed the joint recommendation of the parties and placed Walker on probation. *See* ***State v. Scherreiks***, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989) (a defendant may not challenge on appeal a sentence that he or she affirmatively approved).

Accordingly,

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

IT IS FURTHER ORDERED that counsel is relieved of any further representation of the defendant in these matters pursuant to WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals