



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 III

September 13, 2016

To:

Hon. William M. Atkinson
Circuit Court Judge
Brown County Courthouse, Br. 8
100 S. Jefferson St.
P.O. Box 23600
Green Bay, WI 54305-3600

John VanderLeest
Clerk of Circuit Court
Brown County Courthouse
P.O. Box 23600
Green Bay, WI 54305-3600

David L. Lasee
District Attorney
P.O. Box 23600
Green Bay, WI 54305-3600

Ralph Sczygelski
Sczygelski & Pangburn Law Firm, LLC.
713 Washington St.
Manitowoc, WI 54220-4525

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

Lois P. Velaszquez 323749
Taycheedah Corr. Inst.
P.O. Box 3100
Fond du Lac, WI 54936-3100

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

2014AP2359-CRNM State v. Lois P. Velaszquez (L. C. No. 2012CF529)

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

Counsel for Lois Velaszquez has filed a no-merit report concluding there is no basis to challenge Velaszquez's conviction for first-degree reckless homicide. Velaszquez was advised of her right to respond 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 merit to any issue that could be raised on appeal and summarily affirm.

A criminal complaint alleged that police were dispatched to a report of a break-in and stabbing. Upon arrival, officers found the victim on the floor of the kitchen of the residence

bleeding from a wound to the chest. Velaszquez “started yelling something about males busting the door and stabbing [the victim] while they were attempting to rob [him] of drugs.” Neither the door frame nor the door were damaged, and a witness told police that Velaszquez stabbed the victim during a domestic dispute. Velaszquez was charged with first-degree intentional homicide.

Velasquez agreed to plead no contest to a reduced charge of first-degree reckless homicide. The circuit court imposed a sentence consisting of twenty years’ initial confinement and ten years’ extended supervision.

There is no manifest injustice upon which Velaszquez could withdraw her plea. *See State v. Duychak*, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). The circuit court’s colloquy, buttressed by the plea questionnaire and waiver of rights form, informed Velaszquez of the elements of the offense, the constitutional rights she waived and the potential penalties. Velaszquez was not prejudiced by the circuit court’s failure to specifically advise her of potential deportation consequences outlined in WIS. STAT. §§ 971.08(1)(c) and (2) (2013-14), because the record establishes she is a United States citizen. Although both sides were free to argue at sentencing and the plea did not involve a sentencing agreement, Velaszquez indicated she understood the court would not be bound by any agreement of the parties in any event. Velaszquez also conceded a proper factual basis supported the conviction. The record shows the plea was knowingly, intelligently and voluntarily entered. *See State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). Entry of a valid no contest plea constitutes a waiver of nonjurisdictional defenses and defects.

The record also discloses no basis for challenging the circuit court’s sentencing discretion. The court considered the proper sentencing factors, including Velasquez’s character, the seriousness of the offense and the need to protect the public. *See State v. Harris*, 119 Wis.2d 612, 623, 350 N.W.2d 633 (1984). The court emphasized the seriousness of the homicide, which it characterized as “senseless” and “highly alcohol driven.” The court also properly concluded the penalty “must be significant enough to protect the public.” The court’s sentence was far less than the maximum allowable and therefore presumptively neither harsh nor excessive. *See State v. Grindemann*, 2002 WI App 106, ¶¶29-33, 255 Wis. 2d 632, 648 N.W.2d 507.

We note the circuit court referenced the COMPAS risk assessment at sentencing, but the record demonstrates it was not “determinative” of the sentence imposed. *See State v. Loomis*, 2016 WI 68, ¶¶98-99, ___ Wis. 2d ___, 881 N.W.2d 749. Any challenge to the sentence based on the court’s reference to COMPAS would lack arguable merit.

Our independent review of the record discloses no other potential issues for appeal.

Therefore,

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

IT IS FURTHER ORDERED that attorney Ralph Sczygelski is relieved of further representing Velasquez in this matter.

Diane M. Fremgen
Clerk of Court of Appeals