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**DISTRICT I**

July 14, 2020

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

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2019AP1481-CRNM      State of Wisconsin v. Porsche Marie Humphery  
(L.C. # 2017CF1343)

Before Brash, P.J., Dugan and Donald, JJ.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Porsche Marie Humphery pled guilty to second-degree reckless homicide. She faced maximum penalties of a \$100,000 fine and twenty-five years of imprisonment. *See* WIS. STAT.

§§ 940.06(1) (2017-18),<sup>1</sup> 939.50(3)(d). The circuit court imposed a fifteen-year term of imprisonment bifurcated as nine years of initial confinement and six years of extended supervision. The circuit court granted Humphery the 257 days of sentence credit she requested, ordered her to pay \$10,490.50 in restitution, and found her ineligible for the challenge incarceration program and the Wisconsin substance abuse program. Humphery appeals.

Appellate counsel, Attorney Carly M. Cusack, filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32. Humphery did not file a response. During the pendency of the appeal in this court, successor appellate counsel, Attorney Dustin C. Haskell, filed a postconviction motion on Humphery's behalf pursuant to WIS. STAT. §§ 973.155 and 808.075(4)(g)4., seeking an additional 120 days of sentence credit.<sup>2</sup> The circuit court granted the requested relief. We then ordered the record supplemented with the postconviction motion and order. Upon consideration of the no-merit report and an independent review of the entire record as mandated by *Anders*, we conclude that no arguably meritorious issues exist for an appeal, and therefore we summarily affirm. See WIS. STAT. RULE 809.21.

According to the criminal complaint, police received a report on February 5, 2017, that a dead body had been found in a Milwaukee residence on the 3800 block of North 24th Place. Officers responded to the scene and identified the deceased as Loren High. Police observed a visible gunshot wound in his chest and found two spent bullet casings in the home. Police also

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

<sup>2</sup> Attorney Cusack left her position with the State Public Defender's Office after filing the no-merit report in this matter. The State Public Defender appointed Assistant State Public Defender Dustin C. Haskell as successor appellate counsel for Humphery.

found a piece of glass on a couch in the home, and a latent print examiner determined that Humphery's thumb print was on the glass.

Police recovered High's cell phone at the scene, and a detective reviewed a string of text messages that High and Humphery exchanged on February 1, 2017, in which they argued about their relationship. Then at 3:30 p.m. on that date, High received a text from Humphery asking if he was "home yet." High responded: "home." At 10:05 p.m., High sent a text to a third party stating that High was "having a much needed conversation with my ex to get closure. Wish me luck." At 12:47 a.m. on February 2, 2017, Humphery sent a text to High stating: "I hope you[']re not mad at me [be]cause I didn't come over." High's cell phone does not reflect that he sent any texts after February 1, 2017.

Police determined that Humphery was High's former girlfriend and obtained security video of some of her public activity on February 1, 2017. The video showed that Humphery was wearing, among other articles of clothing, a maroon coat, a light purple scarf, and boots.

Police executed a search warrant at Humphery's home on February 7, 2017, and found a maroon coat and dark winter boots. These items were wet and smelled strongly of cleaner. Police additionally found a light purple scarf and a light purple headband smelling of cleaner and hanging in the shower. Further, a detective examined information available through Humphery's Gmail account and determined that GPS coordinates placed her cell phone in front of and inside of High's residence during the period from 7:13 p.m. until 11:25 p.m. on February 1, 2017.

The State charged Humphery with first-degree reckless homicide by use of a dangerous weapon, as a party to a crime. Humphery pled not guilty and filed a motion to suppress the evidence found pursuant to the search warrant. The circuit court did not address the motion,

however; Humphery withdrew it before the hearing began because the parties had resolved the case with a plea agreement. Pursuant to the terms of that plea agreement, the State filed an amended information charging Humphery with second-degree reckless homicide, and the State agreed that, upon her plea to the amended charge, the State would recommend ten to twelve years of initial confinement without specifying a recommended term of extended supervision. The circuit court accepted Humphery's plea to the amended charge, and the matter subsequently proceeded to sentencing.

We first consider whether Humphery could pursue an arguably meritorious claim for plea withdrawal on the ground that her guilty plea was not knowing, intelligent, and voluntary. *See State v. Bangert*, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986). At the outset of the plea hearing, the circuit court established that Humphery was thirty-one years old, had a high school diploma, and had completed two years of college. The circuit court also established that Humphery had signed a guilty plea questionnaire and waiver of rights form and that she understood the contents of that form and its attachments. *See State v. Pegeese*, 2019 WI 60, ¶37, 387 Wis. 2d 119, 928 N.W.2d 590. The circuit court then conducted a colloquy with Humphery that complied with the circuit court's obligations when accepting a plea other than not guilty. *See id.*, ¶23; *see also* WIS. STAT. § 971.08

Among the circuit court's duties when accepting a guilty plea is to establish that the defendant committed the crime charged. *See* WIS. STAT. § 971.08(1)(b). Here, Humphery, by counsel, stipulated that the facts in the criminal complaint were true. *See State v. Black*, 2001 WI 31, ¶13, 242 Wis. 2d 126, 624 N.W.2d 363 (factual basis established when trial counsel stipulates on the record to the facts in the criminal complaint). In addition, her trial counsel stated that on February 1, 2017, High showed Humphery how to use his gun, but because she was intoxicated,

she mishandled the weapon, pulled the trigger, and shot him. The circuit court properly established a factual basis for Humphery's guilty plea.

Upon review of the totality of the record—including the plea questionnaire and waiver of rights form and addendum, the attached jury instructions describing the elements of second-degree reckless homicide, and the plea hearing transcript—we conclude that Humphery entered her guilty plea knowingly, intelligently, and voluntarily. Further pursuit of this issue would lack arguable merit.

We next consider whether an arguably meritorious basis exists for further pursuit of the issues Humphery raised in her suppression motion. A defendant who enters a valid guilty plea normally forfeits all nonjurisdictional defects and defenses to the criminal charge. *See State v. Kelty*, 2006 WI 101, ¶18 & n.11, 294 Wis. 2d 62, 716 N.W.2d 886. An exception is codified in WIS. STAT. § 971.31(10), which permits appellate review of an order denying a motion to suppress evidence notwithstanding that the defendant appeals a final judgment entered upon a guilty plea. That exception is inapplicable here, however, because Humphery withdrew her suppression motion without obtaining a decision on the matter. Accordingly, further pursuit of the matter would be frivolous within the meaning of *Anders*.

We also conclude that Humphery could not pursue an arguably meritorious challenge to the circuit court's exercise of sentencing discretion. *See State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. The circuit court indicated that deterrence and public protection were the primary sentencing goals, and the circuit court discussed the sentencing factors that it viewed as relevant to achieving those goals. *See id.*, ¶¶41-43. The sentence that the circuit court selected was well within the limits of the maximum sentence allowed by law and cannot be

considered unduly harsh or unconscionable. *See State v. Grindemann*, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507. Further pursuit of this issue would lack arguable merit.

We next conclude that Humphery could not pursue an arguably meritorious challenge to the order that she pay restitution of \$10,490.50. Humphery stipulated to restitution in that amount. *See WIS. STAT. § 973.20(13)(c)*. Therefore, a challenge to the order would be frivolous within the meaning of *Anders*. *See State v. Leighton*, 2000 WI App 156, ¶56, 237 Wis. 2d 709, 616 N.W.2d 126.

Lastly, we have considered whether Humphery could pursue an arguably meritorious claim that the circuit court erred by finding her ineligible to participate in the challenge incarceration program and the Wisconsin substance abuse program. We conclude that she could not do so. A person convicted of any crime specified in WIS. STAT. ch. 940 is statutorily disqualified from participation in either program. *See WIS. STAT. §§ 302.045(2)(c); 302.05(3)(a)1*.

Our independent review of the record does not disclose any other potential issues warranting discussion. We conclude that further postconviction or appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

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

IT IS FURTHER ORDERED that Attorney Dustin C. Haskell is relieved of any further representation of Porsche Marie Humphery. *See WIS. STAT. RULE 809.32(3)*.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*