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DISTRICT II

November 20, 2024

To:

Hon. Jason A. Rossell
Circuit Court Judge
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

Rebecca Matoska-Mentink
Clerk of Circuit Court
Kenosha County Courthouse
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Lidia Lopez #722930
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Fond du Lac, WI 54936-3100

David Malkus
Electronic Notice

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

2024AP1021-CRNM State of Wisconsin v. Lidia Lopez (L.C. #2021CF1520)

Before Neubauer, Grogan and Lazar, 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).

Lidia Lopez appeals a judgment, entered following her guilty plea, convicting her of child enticement. Lopez's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22)¹ and *Anders v. California*, 386 U.S. 738 (1967). Lopez was advised of her right to file a response, and she has not responded. After reviewing the Record and counsel's

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

report, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment. *See* WIS. STAT. RULE 809.21.

The State charged Lopez with one count of exposing genitals and one count of child enticement. According to the complaint, sixteen-year-old S.O.S. reported to police that Lopez, who was his supervisor at work, sent him sexually explicit photos. S.O.S. also reported that on one occasion, Lopez drove S.O.S. to her home. Lopez took her clothing off while the two were in the car, and they also had sexual contact in the car.

Pursuant to a plea agreement, Lopez pled guilty to the child-enticement charge. The exposing-genitals charge was dismissed and read-in. The State agreed to recommend probation. Ultimately, the circuit court sentenced Lopez to three years of initial confinement and five years of extended supervision.² This no-merit appeal follows.

The no-merit report addresses potential issues of whether Lopez's plea was knowingly, voluntarily, and intelligently entered and whether the circuit court properly exercised its discretion at sentencing. Upon reviewing the Record, we agree with counsel's analysis and conclusion that there is no arguable basis to pursue any of these issues. We comment briefly on these issues.

With regard to the circuit court's plea colloquy, appellate counsel points out that the court did not expressly ask Lopez during the plea hearing whether she knew the court was not bound by the plea agreement. *See State v. Hampton*, 2004 WI 107, ¶42, 274 Wis. 2d 379, 683 N.W.2d

² At the same sentencing hearing, Lopez was also sentenced in Kenosha County Circuit Court case No. 2022CF1395. That case is not included in this no-merit appeal.

14 (“[T]he court must engage in a colloquy with the defendant on the record at the plea hearing to ascertain whether the defendant understands that the court is not bound by a sentencing recommendation from the prosecutor or any other term of the defendant’s plea agreement.”). However, counsel advises this court that there is no merit to seek plea withdrawal on this basis because “for reasons outside of the court record, undersigned counsel is unable to allege that Ms. Lopez did not understand this information when she entered her plea.” We agree with counsel that there is no arguable merit to seek plea withdrawal on this basis. *See State v. Brown*, 2006 WI 100, ¶39, 293 Wis. 2d 594, 716 N.W.2d 906 (motion for plea withdrawal based on plea colloquy deficiency must “allege that the defendant did not know or understand the information that should have been provided at the plea hearing.”).

The remainder of the circuit court’s plea colloquy sufficiently complied with the requirements of *Brown*, 293 Wis. 2d 594, ¶35, and WIS. STAT. § 971.08 relating to the nature of the charge, the rights Lopez was waiving, and other matters. The Record shows no other ground to withdraw the plea. We therefore agree with counsel’s analysis and conclusion that any challenge to the validity of Lopez’s plea would lack arguable merit.

With regard to the circuit court’s sentencing discretion, our review of the Record confirms that the court appropriately considered the relevant sentencing objectives and factors. *See State v. Odom*, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695; *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The resulting sentence was within the maximum authorized by law. *See State v. Scaccio*, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449. The sentence was not so excessive so as to shock the public’s sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). Therefore, there would be no arguable merit to a challenge to the court’s sentencing discretion.

Our independent review of the Record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the judgment of conviction and discharges appellate counsel of the obligation to represent Lopez further in this appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney David Malkus is relieved of further representation of Lidia Lopez in this appeal. *See* WIS. STAT. RULE 809.32(3).

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

Samuel A. Christensen
Clerk of Court of Appeals