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DISTRICT III

December 10, 2024

To:

Hon. Scott R. Needham
Circuit Court Judge
Electronic Notice

Kristi Severson
Clerk of Circuit Court
St. Croix County Courthouse
Electronic Notice

Frederick A. Bechtold
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Kara Noel Kulke 370952
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You are hereby notified that the Court has entered the following opinion and order:

2023AP273-CRNM State of Wisconsin v. Kara Noel Kulke
2023AP274-CRNM (L. C. Nos. 2021CF175, 2021CF241)

Before Stark, P.J., Hruz and Gill, 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).

Counsel for Kara Noel Kulke has filed a no-merit report concluding that no grounds exist to challenge Kulke's convictions for operating a motor vehicle while intoxicated (OWI), as a seventh offense and with the alcohol fine enhancer, and for felony bail jumping. Kulke filed a response. Upon our independent review of the records 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. Therefore, we summarily affirm the judgments of conviction. *See* WIS. STAT. RULE 809.21 (2021-22).[1]

In St. Croix County case No. 2021CF175, the State charged Kulke with OWI, as a fourth offense and with the alcohol fine enhancer,[2] and with operating a motor vehicle while revoked. According to the complaint, law enforcement was dispatched to the scene of a car crash. Upon his arrival, the responding police officer observed a car halfway over a snowbank. The officer approached the vehicle and saw Kulke on her phone in the driver's seat. Initially, Kulke did not acknowledge the officer's presence. Later, however, Kulke put her phone away, provided identification, and informed the officer that she was not injured. After checking with the Wisconsin Department of Motor Vehicles, the officer determined that Kulke's license was revoked and there was a warrant for her arrest based on her failure to appear in court in Rock County for an OWI charge. The officer did not detect any signs of impairment but was advised by an EMT at the scene that Kulke may be "on something."

After confirming that the warrant was in effect, the officer informed Kulke she was under arrest. At the St. Croix County jail, staff asked Kulke if she would be willing to do a preliminary breath test. Kulke agreed and blew a .37. Due to her high alcohol concentration and because she was involved in a car crash, the officer transported Kulke to the hospital for treatment. While

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

[2] A defendant with two or more prior convictions, as counted under WIS. STAT. § 343.307(1), is subject to an alcohol concentration fine enhancer. If the defendant's alcohol level is .17 to .199, the applicable minimum and maximum fines are doubled. If the defendant's alcohol level is .20 to .249, minimum and maximum fines are tripled. If the defendant's alcohol level is .25 or greater, the minimum and maximum fines are quadrupled. *See* WIS. STAT. § 346.65(2)(g).

standing next to Kulke at the hospital, the officer detected a light odor of alcohol coming from her and observed that she had problems balancing. He proceeded with a field sobriety test.

When the officer attempted to administer the walk-and-turn test, Kulke was unable to maintain her balance. At that point, the officer informed Kulke that he would be issuing an OWI citation.

The officer read Kulke the "Informing the Accused" form, and she consented to giving blood. A subsequent blood test revealed a blood alcohol concentration of .358. The State later amended the charges against Kulke to include one count of operating a motor vehicle with a prohibited blood alcohol concentration, as a fourth offense and with the alcohol fine enhancer.

The circuit court allowed Kulke to be released on bond with conditions, which included maintaining absolute sobriety. The court additionally required Kulke to use an alcohol monitoring device that would be used for random testing at least four times per day. After repeated violations of the testing conditions, the State charged Kulke with one count of felony bail jumping in St. Croix County case No. 2021CF241.

Kulke ultimately opted to enter a guilty plea to an amended charge of OWI, as a seventh offense and with the alcohol fine enhancer, in case No. 2021CF175.[3] She also pled guilty to the charge of felony bail jumping in case No. 2021CF241. For the OWI charge, the circuit court sentenced Kulke to three years of initial confinement followed by three years of extended supervision. This was the mandatory minimum amount of initial confinement. *See* WIS. STAT.

[3] While this case was pending, Kulke was convicted of additional OWI charges. By the time she pled guilty in case No. 2021CF175, the charge against her had increased to OWI, as a seventh offense.

§ 346.65(2)(am)6. The court ordered the sentence to run consecutive to the sentence Kulke was already serving in another case. The court deemed Kulke eligible for the Substance Abuse Program.[4] For the felony bail jumping charge, the court imposed a fine but did not impose any additional confinement time.

The comprehensive no-merit report addresses whether there would be arguable merit to a claim that Kulke did not knowingly, voluntarily, and intelligently enter her guilty pleas. *See* ***State v. Bangert***, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). Our review of the records and of counsel's analysis in the no-merit report satisfies us that the circuit court complied with its obligations for taking the guilty pleas, pursuant to WIS. STAT. § 971.08, ***Bangert***, 131 Wis. 2d at 261-62, and ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. There would be no arguable merit to a claim on this basis.

The no-merit report additionally addresses whether there would be arguable merit to a claim that the circuit court erroneously exercised its sentencing discretion. *See* ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. At sentencing, a court must consider the principal objectives of sentencing, including the protection of the community, the punishment and rehabilitation of the defendant, and deterrence to others, ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76, and determine which objective or objectives are of greatest importance, ***Gallion***, 270 Wis. 2d 535, ¶41. The weight to be given to each factor is committed to the circuit court's discretion. ***Ziegler***, 289 Wis. 2d 594, ¶23.

[4] The circuit court referenced the Earned Release Program in its sentencing remarks. Wisconsin's Substance Abuse Program was formerly known as the Earned Release Program. *See* 2011 Wis. Act 38, § 19. The program is identified by both names in the current version of the Wisconsin Statutes. *See* WIS. STAT. §§ 302.05, 973.01(3g).

On review, we "search the record to determine whether in the exercise of proper discretion the sentence imposed can be sustained." ***McCleary v. State***, 49 Wis. 2d 263, 282, 182 N.W.2d 512 (1971). Here, the circuit court noted that Kulke faced multiple OWI charges for conduct spanning a relatively short period of time. In this particular case, the court expressed concern that the incident occurred in a busy part of the community on a school day at 4:00 p.m. The court described the circumstances as "quite honestly a formula for disaster." The court appropriately considered relevant sentencing objectives and factors, and it imposed reasonable sentences. There would be no arguable merit to a challenge to the court's sentencing discretion.

In her response, Kulke requests that this court restructure her sentence on the OWI charge. She explains that she was charged with multiple OWI charges in four separate counties over a short period of time. Kulke believes that this fact complicated her sentencing and resulted in her "not being granted globalization of the charges." Kulke specifically takes issue with the circuit court's decision to impose a consecutive sentence in case No. 2021CF175. She contends that the mandatory minimum sentences for her various OWI charges leave her unable to participate in the Substance Abuse Program.[5]

During the sentencing hearing, defense counsel highlighted the programming that Kulke was taking advantage of in prison and emphasized Kulke's goals of getting her master's degree

[5] In ***State v. Gramza***, 2020 WI App 81, ¶3, 395 Wis. 2d 215, 952 N.W.2d 836, this court held that an inmate must complete any mandatory minimum term of initial confinement before the person may benefit from an early release provision. Insofar as Kulke expresses other frustrations related to programming after the initial eligibility determination, the availability of and enrollment in programs in the correctional facilities are within the purview of the Department of Corrections (DOC), not the courts. *See* WIS. ADMIN. CODE § DOC 302.14 (Nov. 2024); *see also* ***State v. Lynch***, 105 Wis. 2d 164, 168, 312 N.W.2d 871 (Ct. App. 1981) ("Once a prison term is selected … the [circuit] court may not order specific treatment. Control over the care of prisoners is vested by statute in the [DOC].").

in counseling and working with children and teenagers in crisis, where she would be able to draw upon her own experience with alcoholism. Counsel also noted that Kulke had already received substantially more than the minimum sentences in her other OWI cases in Columbia and Dane Counties and pointed out that an additional charge of OWI, as an eighth offense, was pending in Rock County. In light of this background, defense counsel joined in the State's request that Kulke serve three years of initial confinement followed by three years of extended supervision, but counsel asked that the sentence run concurrently with the other sentences Kulke was serving.

During her own sentencing remarks, Kulke reiterated the request for a concurrent sentence. The circuit court declined Kulke's request, explaining at one point in its remarks: "This is a separate crime. And while it's on a continuum, so to speak, of criminal activity that spanned 15 to 18 months, it is a crime that was unique to St. Croix County, and a crime that put you as well as others in significant peril." The court provided a "rational and explainable basis" for its decision to impose a consecutive sentence. *See* ***Gallion***, 270 Wis. 2d 535, ¶39 (citation omitted).

Our independent review of the records reveals no other potential issues of arguable merit.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Frederick A. Bechtold is relieved from further representing Kara Noel Kulke in these matters. *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