

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

October 10, 1996

NOTICE

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-0395-CR-NM

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

LARRY D. COOK,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Rock County:
MICHAEL J. BYRON, Judge. *Affirmed.*

Before Eich, C.J., Dykman, P.J., and Vergeront, J.

PER CURIAM. Counsel for Larry Cook has filed a no merit report pursuant to RULE 809.32, STATS. Cook was advised of his right to respond to the report and has elected not to respond. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude that there is no arguable merit to any issue that could be raised on appeal.

A jury convicted Cook of second-degree sexual assault, false imprisonment and battery. The court sentenced him to concurrent terms of imprisonment totaling eight years. The no merit report addresses numerous issues. Our independent review of the record confirms counsel's analysis of these issues.

We must affirm the verdicts if the evidence, viewed most favorably to the State, is not inherently or patently incredible or so lacking in probative value that no jury could have found guilt beyond a reasonable doubt. *See State v. Alles*, 106 Wis.2d 368, 376-77, 316 N.W.2d 378, 382 (1982). The victim's testimony alone constitutes sufficient evidence to establish all of the elements of the offenses charged. She testified that Cook prevented her from leaving her apartment, struck her in the face and forced her to perform oral sex on him. Although portions of her testimony were refuted by other witnesses, it is the jury's responsibility to determine the credibility of the witnesses and the weight to be given their testimony. *Id.* at 377, 316 N.W.2d at 382.

The record discloses no prejudicial error in the conduct of the trial or in the pretrial motions. Most of the pretrial motions were decided in favor of the defense. The record discloses no basis for suppressing any physical evidence or Cook's statements to the police.

There is no basis for challenging the performance of Cook's trial counsel. To establish ineffective assistance of counsel, Cook must show that his counsel's performance fell below an objective standard of reasonableness and that the deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Judicial scrutiny of counsel's performance is highly deferential and Cook must overcome the presumption that his counsel's action might be considered sound trial strategy. *Id.* at 689. To establish prejudice, Cook must show a reasonable probability that his counsel's unprofessional errors affected the result of the trial. A reasonable probability is one sufficient to undermine confidence in the outcome. *Id.* at 694. Cook's trial counsel's performance exhibits a sound trial strategy and this court's confidence in the outcome is not undermined by his counsel's performance.

Finally, there is no arguable merit to any challenge to the sentence. The court articulated the factors upon which the sentence was based. It did not

consider any improper factors or overlook any relevant factors. The eight-year sentence is not so excessive as to shock the court's conscience. See *Ocanas v. State*, 70 Wis.2d 179, 185, 233 N.W.2d 457, 461 (1975).

Our independent review of the record discloses no other potential issues for appeal. Therefore, we relieve Attorney T. Christopher Kelly of further representing Cook in this matter and affirm the judgment of conviction.

By the Court. – Judgment affirmed.