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DISTRICT I

October 17, 2023

To:

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Circuit Court Judge
Electronic Notice

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Clerk of Circuit Court
Milwaukee County Safety Building
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Abimael Trevino Jr. 373129
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You are hereby notified that the Court has entered the following opinion and order:

2022AP821-CRNM	State of Wisconsin v. Abimael Trevino, Jr. (L.C. # 2019CF870)
2022AP822-CRNM	State of Wisconsin v. Abimael Trevino, Jr. (L.C. # 2019CF4617)

Before White, C.J., Donald, P.J., and Dugan, J.

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).

Abimael Trevino appeals judgments of conviction, following a jury trial, of two counts of repeated sexual assault of a child. His appellate counsel, Angela C. Kachelski, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22),¹ and *Anders v. California*, 386 U.S. 738 (1967). Trevino received a copy of the report, was advised of his right to respond, and has responded. Appellate counsel filed a supplemental no-merit report. We have independently reviewed the record, the no-merit report, the response, and the supplemental no-merit report as

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

mandated by *Anders*. We conclude that there are no issues of arguable merit that could be pursued on appeal. We, therefore, summarily affirm.²

On February 28, 2019, the State charged Trevino with one count of repeated sexual assault of a child, three or more violations, in Milwaukee County Circuit Court case No. 2019CF870. The charge stemmed from allegations made by Trevino's niece that he sexually assaulted her on multiple occasions. On October 17, 2019, the State charged Trevino with one count of repeated sexual assault of a child, three or more violations, in Milwaukee County Circuit Court case No. 2019CF4617. The charge stemmed from allegations made by Trevino's daughter that he also sexually assaulted her on numerous occasions.

The matters proceeded to trial where the cases were tried jointly. Multiple witnesses, including law enforcement and the victims, testified. The jury found Trevino guilty on both counts. The circuit court sentenced Trevino to twenty-five years of initial confinement and ten years of extended supervision on both counts, to run consecutive to one another.

Appellate counsel's no-merit report first sets forth counsel's review of the pretrial hearings and issues, *voir dire*, opening statements, witness testimony, jury instructions, the defense motion for a directed verdict, the trial court's colloquy with Trevino when he elected not to testify, closing arguments, and the jury verdict. We have independently reviewed the record and agree with counsel's description of each stage of the proceedings.

² By order dated July 5, 2022, this court consolidated these appeals for briefing and disposition.

The no-merit report next addresses the sufficiency of the evidence. When this court considers the sufficiency of evidence presented at trial, we apply a highly deferential standard. See *State v. Kimbrough*, 2001 WI App 138, ¶12, 246 Wis. 2d 648, 630 N.W.2d 752. We “may not reverse a conviction unless the evidence, viewed most favorably to the [S]tate and the conviction, is so insufficient in probative value and force that ... no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt.” See *State v. Poellinger*, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). The finder of fact, not this court, considers the weight of the evidence and the credibility of the witnesses and resolves any conflicts in the testimony. See *id.* at 503-04.

We agree with appellate counsel’s analysis as to the sufficiency of the evidence. The jury heard testimony from both of the victims, viewed video recordings of their forensic interviews, and heard testimony from multiple law enforcement officials. The jury concluded from this evidence that Trevino was guilty as charged. This evidence is sufficient to sustain the conviction. We agree with appellate counsel’s determination that there is no arguable merit to challenging the sufficiency of the evidence supporting the verdict.

Appellate counsel also addresses whether the trial court erroneously exercised its sentencing discretion. See *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197; *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Our review of the record confirms that the trial court thoroughly considered the relevant sentencing objectives and factors, particularly the seriousness of the offenses, the effect of Trevino’s conduct on the victims, and his character. The sentence the trial court imposed is within the range authorized by law, see *State v. Scaccio*, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449, and is 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). There would be no arguable merit to a challenge to the trial court’s sentencing discretion.

In his response, Trevino argues that his trial counsel was ineffective for numerous reasons. Specifically, he argues that counsel failed to investigate an alibi witness (his mother); failed to call an expert witness to testify about “child memory” issues and the ability of children to be easily influenced by outside factors; failed to object to opening and closing statements; failed to challenge the fact that the State did not have to prove the exact dates of the assaults; failed to object to a speedy trial violation; failed to object to the admission of other acts evidence; and failed to object to what he contends was his illegal arrest. He also contends that his trial counsel coerced and threatened him into not testifying at trial.

Appellate counsel’s supplemental report addresses all of Trevino’s arguments except one—the report does not address Trevino’s argument that counsel did not challenge the specific dates of the assaults. We conclude that Trevino’s argument lacks merit because sexual assault cases do not “require proof of an exact date.” See *State v. Fawcett*, 145 Wis. 2d 244, 250, 426 N.W.2d 91 (Ct. App. 1988). In particular, child sexual assault cases “often encompass[] a period of time and a pattern of conduct. As a result, a singular event or date is not likely to stand out in the child’s mind.” *Id.* at 254. Accordingly, in sexual assault cases involving child victims, “a more flexible application of notice requirements is required and permitted. The vagaries of a child’s memory more properly go to the credibility of the witness and the weight of the testimony, rather than to the legality of the prosecution in the first instance.” *Id.* (citation omitted). As to the remainder of Trevino’s claims, counsel’s supplemental report discusses why each of the claims lack arguable merit. Upon our independent review of the record, we conclude

that counsel's arguments and description of the supporting facts are accurate. Trevino's arguments lack arguable merit.

Accordingly, this court accepts the no-merit report, affirms the convictions, and discharges appellate counsel of the obligation to represent Trevino further in this appeal.

Upon the foregoing, therefore,

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

IT IS FURTHER ORDERED that Attorney Angela C. Kachelski is relieved of further representation of Abimael Trevino in this matter. *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