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DISTRICT III

January 4, 2024

To:

Hon. Thomas J. Walsh
Circuit Court Judge
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

John VanderLeest
Clerk of Circuit Court
Brown County Courthouse
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Omar Joaquin Salmeron 638775
Kettle Moraine Correctional Inst.
P.O. Box 282
Plymouth, WI 53073-0282

Leonard D. Kachinsky
Electronic Notice

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

2023AP1627-CRNM State of Wisconsin v. Omar Joaquin Salmeron
(L. C. No. 2019CF170)

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 Omar Joaquin Salmeron has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22),¹ concluding that no grounds exist to challenge Salmeron's convictions for repeated sexual assault of the same child and first-degree sexual assault of a child. Salmeron was informed of his right to file a response to the no-merit report, but he has not responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738

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

(1967), we conclude that there is no arguable merit to any issue that could be raised on appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

The charges against Salmeron were based on allegations that he had sexually assaulted two of his relatives, Adam and Alice.² Adam and Alice reported the assaults to law enforcement in January 2019. Adam alleged that Salmeron had repeatedly sexually assaulted him during a three-year period, beginning in 2006 when Adam was five years old, by forcing his penis into Adam's mouth and anus. Alice reported that Salmeron had sexually assaulted her on one occasion when she was between five and eight years old by rubbing his penis on her vaginal area and attempting to insert his penis into her vagina. Alice later clarified that this assault occurred during the summer of 2008, when she was five or six years old.

At a final pretrial conference in August 2021, Salmeron's attorney informed the circuit court that he had a concern regarding Salmeron's competency, and the court ordered a competency evaluation. Following the evaluation, a psychiatrist submitted a report opining that Salmeron was competent to stand trial. During a subsequent competency hearing, Salmeron agreed that the court could receive the psychiatrist's report into evidence in lieu of testimony and stated that he had no objection to the court finding him competent. The court then made a finding that Salmeron was competent to proceed.

The case ultimately proceeded to a jury trial in January 2022, during which the State presented testimony from the two victims, their mother, and two law enforcement officers. After

² Pursuant to the policy underlying WIS. STAT. RULE 809.86(4), we use pseudonyms instead of the victims' names.

the State rested, Salmeron called his own mother to testify. Following a colloquy with the circuit court, Salmeron elected not to testify in his own defense, and the defense then rested. The jury ultimately convicted Salmeron of both repeated sexual assault of the same child—the count pertaining to Adam—and first-degree sexual assault of a child—the count pertaining to Alice.

The circuit court ordered a presentence investigation report, and the defense submitted a psychological evaluation of Salmeron that addressed his sexual recidivism risk. At sentencing, the State recommended that the court impose eighteen years' initial confinement followed by twenty years' extended supervision on the repeated sexual assault of the same child charge and a consecutive sentence of seven years' initial confinement followed by ten years' extended supervision on the first-degree sexual assault of a child charge. The defense recommended concurrent sentences of five years' initial confinement followed by five years' extended supervision on each count. Salmeron exercised his right of allocution. After considering Salmeron's character, the gravity of the offenses, the need to protect the public, Salmeron's rehabilitative needs, and the need for punishment, the court adopted the State's sentence recommendation. With the parties' agreement, the court granted Salmeron 915 days of sentence credit.

The no-merit report addresses: (1) whether Salmeron's trial attorney was constitutionally ineffective; (2) whether the circuit court erred in ruling on Salmeron's motions in limine; (3) whether any errors occurred during jury selection; (4) whether the court erred in ruling on the sole objection raised at trial; (5) whether the evidence was sufficient to support the jury's verdicts; and (6) whether the court erroneously exercised its sentencing discretion. We agree with counsel's description, analysis, and conclusion that these potential issues lack arguable merit, and we therefore do not address them further.

The no-merit report does not address whether any issues of arguable merit exist regarding: (1) the circuit court's determination that Salmeron was competent to stand trial; (2) the parties' opening statements and closing arguments; (3) Salmeron's waiver of his right to testify; and (4) the jury instructions. Nevertheless, having independently reviewed the record, we are satisfied that none of these potential issues has arguable merit. First, the court properly found Salmeron competent to proceed based on the psychiatrist's report, which Salmeron did not contest. Second, nothing improper occurred during the parties' opening statements or closing arguments. Third, the court conducted an appropriate colloquy with Salmeron regarding his waiver of the right to testify. Fourth, the jury instructions accurately conveyed the applicable law and burden of proof.

Our independent review of the record discloses no other potential issues for appeal.

Therefore,

IT IS ORDERED that the judgment is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Leonard D. Kachinsky is relieved of any further representation of Omar Joaquin Salmeron 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