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DISTRICT I

February 13, 2024

To:

Hon. David L. Borowski
Circuit Court Judge
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Lauren Jane Breckenfelder
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

James Damien Walls 213614
New Lisbon Correctional Inst.
P.O. Box 2000
New Lisbon, WI 53950-2000

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

2022AP1886-CRNM State of Wisconsin v. James Damien Walls (L.C. # 2019CF4977)

Before White, C.J., Donald, P.J., and Geenen, 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).

James Damien Walls appeals a judgment convicting him of one count of second-degree sexual assault, one count of knowingly violating a domestic abuse order, and one count of burglary, all as acts of domestic abuse. His appellate counsel, Lauren Jane Breckenfelder, 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). Walls received a copy of the report, was advised of his right to respond, and has not done so. We have independently reviewed the record and the no-merit

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

report, as mandated by *Anders*. We conclude that there are no issues of arguable merit that could be pursued on appeal. We therefore summarily affirm. *See* WIS. STAT. RULE 809.21.

The State charged Walls with one count of second-degree sexual assault with the use of force, as an act of domestic abuse (count one), and one count of knowingly violating a domestic abuse injunction, as an act of domestic abuse (count two). An amended information later added a burglary charge, also as an act of domestic abuse (count three). According to the charging documents, Walls entered the apartment of his then-wife without her consent and sexually assaulted her. A domestic abuse injunction prohibiting Walls from threatening the victim or entering her residence was in place at the time.

The matter proceeded to trial where multiple witnesses, including law enforcement, the victim, a sexual assault nurse examiner, and two friends of the victim testified. The jury found Walls guilty as charged. The trial court sentenced Walls to eight years of initial confinement and four years of extended supervision on count one, one year of initial confinement and one year of extended supervision on count two (concurrent to count one), and two years of initial confinement and two years of extended supervision on count three (consecutive to count one). This no-merit report follows.

Appellate counsel's no-merit report addresses three issues: (1) whether the evidence presented at trial was sufficient to support the convictions; (2) whether any arguably meritorious issues arose before or during trial; and (3) whether the trial court erroneously exercised its sentencing discretion.

When this court considers the sufficiency of evidence presented at trial, we review it under a highly deferential standard. *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.” *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. *Id.* at 506-07.

Here, the jury heard testimony from multiple witnesses, including the victim. The jury also heard recorded phone calls made by Walls from jail, in which he asked one of the victim’s friends to convince the victim not to testify. The jury concluded from the evidence that Walls was guilty as charged. This evidence is sufficient to sustain the convictions. We agree with appellate counsel’s determination that there is no arguable merit to challenging the sufficiency of the evidence supporting the verdicts.

Appellate counsel’s no-merit report next addresses whether any arguably meritorious issues arose before or during trial. Counsel specifically addresses the trial court’s colloquy with Walls when he elected not to testify, Walls’s invocation of his statutory right to a speedy trial, and an evidentiary ruling regarding the victim’s prior criminal record. We have independently reviewed the record and agree with counsel’s factual description and analysis of each issue.

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. The trial court specifically focused on Walls’s character, his criminal history, the

effect of his conduct on the victim, and the need to protect the public. 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 addition to the issues discussed above, we have independently reviewed the record.² Our independent review of the record did not disclose any arguably meritorious issue for appeal. Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report, affirm the judgment of conviction, and relieve Attorney Breckenfelder of further representation of Walls in this appeal.

Upon the foregoing, therefore,

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

IT IS FURTHER ORDERED that Attorney Lauren Jane Breckenfelder is relieved of further representation of James Damien Walls 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

² We note that appellate counsel's no-merit report does not address whether any arguably meritorious issues arose as to *voir dire*, other evidentiary rulings, opening statements, closing arguments, or the defense's motion for a directed verdict. Our independent review of the record reveals no issues of arguable merit as to these stages in the proceedings.