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DISTRICT I

March 26, 2024

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

2023AP1051-CRNM State of Wisconsin v. Anthony Paul Clark (L.C. # 2021CF2698)

Before Donald, P.J., Geenen and Colón, 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).

Anthony Paul Clark appeals his judgment of conviction entered after a jury found him guilty of child enticement and second-degree sexual assault. His appellate counsel, Angela Dawn Chodak, has filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967) and WIS. STAT. RULE 809.32 (2021-22).¹ Clark received a copy of the report and was advised of his right to file a response, but he did not do so. Upon this court's independent review of the

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

record as mandated by *Anders* and counsel's report, we conclude there are no issues of arguable merit that could be pursued on appeal. We therefore summarily affirm.

The charges against Clark stem from an incident that occurred in June 2021. Celeste,² who was sixteen years old at the time, reported to a deputy from the Milwaukee County Sheriff's Department that she had been sexually assaulted by an unknown man driving a black Chevrolet truck. She stated that she was walking to a friend's house when the man drove by and offered her a ride. She accepted, and he dropped her off at her friend's house. However, the friend was not home, so Celeste began walking again. She said the man in the truck returned and again offered her a ride, but she said no. She stated the man got out and forced her into his truck. He then drove to a park and forced her to perform oral sex on him, shoving her head down toward his penis. He also forced her to have penis-to-vagina intercourse.

Afterwards, Celeste stated that the man started driving again, but she was able to get out of the truck when it stopped at a stop sign. She said she ran home and told her mother about the assault. Her mother then took Celeste to the hospital where she had an exam performed by a Sexual Assault Nurse Examiner (SANE).

Celeste provided a physical description of the man as well as a description of his truck, including two possible license plate numbers. The deputy traced one of the license plate options to a black Chevrolet truck owned by Clark. The deputy presented a photo array to Celeste, who identified Clark as her assailant. Clark was arrested and charged with child enticement and second-degree sexual assault.

² "Celeste" is a pseudonym for the victim, pursuant to WIS. STAT. RULE 809.86.

The matter proceeded to trial in May 2022. Celeste testified that she had run away from home the day before the assault after a fight with her mother and had slept in the park that night. She explained that they were arguing because her mother wanted to send her to the mental health complex.

Regarding the events leading up to the assault, Celeste testified that when the man offered her a ride the second time, he offered her money for food, which is why she got into his truck. This contradicted her statement to the deputy that she had been forced into the truck by Clark. In her description of the assault, Celeste testified that she had only been forced to perform oral sex, and that she was not forced to have penis-to-vagina intercourse, also contrary to her statement to the deputy. Additionally, Celeste testified that she vomited on her sweatshirt after performing oral sex.

Celeste's mother testified, describing how upset Celeste was when she told her about the assault. She admitted on cross-examination that Celeste had ongoing mental health issues.

A SANE nurse testified about the report relating to Celeste's exam after the assault. The report indicated that Celeste had told the nurse performing the exam that the assault included both oral sex and penis-to-vagina intercourse.

The deputy who interviewed Celeste after the assault also testified. She stated that Celeste had described her assault as including both oral sex and penis-to-vagina intercourse. The deputy also testified that in her interview with Clark after he was arrested, he denied picking up Celeste. The deputy further stated that when she presented the photo array, Celeste had been "100 percent positive" about her identification of Clark.

Also testifying for the State was a DNA analyst from the State Crime Lab. She explained that the DNA sample from Celeste's genital area indicated the presence of male DNA, but was not sufficient to obtain a DNA profile. However, a non-sperm sample recovered from Celeste's sweatshirt strongly indicated that Clark's DNA was present.

The jury found Clark guilty of both counts as charged. The circuit court imposed a sentence of ten years of initial confinement followed by ten years of extended supervision for the child enticement count, and fifteen years of initial confinement followed by eight years of extended supervision for the second-degree sexual assault count, to be served concurrent to each other but consecutive to any other sentence Clark was serving. This no-merit appeal follows.

The no-merit report discusses pretrial rulings, jury selection, the jury instructions provided, Clark's waiver of his right to testify, and the circuit court's response to objections made at trial, and found no issues of arguable merit. The report also addresses the sufficiency of the evidence, describing the elements the State was required to prove and detailing the evidence that was presented, including the inconsistencies in Celeste's testimony. The report set forth the applicable standard of review, noting that it is up to the jury to assess witness credibility and resolve any conflicts in the testimony. *See State v. Poellinger*, 153 Wis. 2d 493, 503, 451 N.W.2d 752 (1990). The report further observes that Celeste's testimony of the incident satisfied the statutory elements of child enticement, *see* WIS. STAT. § 948.07(3), and that her testimony about the forced oral sex meets the statutory definition of second-degree sexual assault, *see* WIS. STAT. § 940.225(2)(a). We agree with appellate counsel's conclusion that there are no issues of arguable merit relating to the trial or to pretrial proceedings.

Additionally, the no-merit report discusses the circuit court's exercise of its discretion during sentencing. The record reflects that the circuit court considered relevant sentencing objectives and factors. See *State v. Gallion*, 2004 WI 42, ¶¶17, 40, 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. In particular, the court noted the predatory nature of the assault, observing that Clark was sixty years old at the time, and had preyed on a vulnerable sixteen-year-old girl.

The report also addresses whether Clark's sentences could be considered excessive.³ The sentences imposed are within the statutory maximums, and are thus presumed not to be unduly harsh or unconscionable. See *State v. Grindemann*, 2002 WI App 106, ¶32, 255 Wis. 2d 632, 648 N.W.2d 507. We agree with appellate counsel's conclusion that there would be no arguable merit to a challenge of Clark's sentences.

Finally, the no-merit report addresses whether there are any other issues that should be considered. Specifically, the report discusses Clark's trial counsel's concession that Clark had given Celeste a ride in his truck, when in his statement to the deputy, Clark denied picking her up. The report notes that in light of the DNA results showing a strong likelihood of Clark's DNA being present on Celeste's sweatshirt, the defense chose a strategy suggesting that Celeste had fabricated the assault, rather than one of mistaken identity. We agree with appellate counsel's conclusion that there would be no arguable merit to a claim relating to this issue.

³ The no-merit report indicates that the sentences imposed here was "substantially longer" than the sentences recommended by the State, which was a global sentence of fifteen years of initial confinement followed by seven years of extended supervision. Appellate counsel's statement was based on her belief that the sentences imposed here were to be served consecutively; however, as reflected in the judgment of conviction and the sentencing hearing transcript, the sentences imposed are being served concurrently, but are consecutive to any sentence that was being served at the time of sentencing.

Our independent review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the conviction, and discharges appellate counsel of the obligation to represent Clark further in this appeal.

Upon the foregoing,

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

IT IS FURTHER ORDERED that Attorney Angela Dawn Chodak is relieved of further representation of Anthony Paul Clark 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