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DISTRICT III

July 9, 2024

To:

Hon. Mitchell J. Metropulos
Circuit Court Judge
Electronic Notice

Barb Bocik
Clerk of Circuit Court
Outagamie County Courthouse
Electronic Notice

Leonard D. Kachinsky
Electronic Notice

Charles M. Stertz
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

David Anthony Aull 710317
Oshkosh Correctional Inst.
P.O. Box 3310
Oshkosh, WI 54903-3310

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

2023AP409-CRNM State of Wisconsin v. David Anthony Aull
(L. C. No. 2021CF560)

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).

David Aull appeals from a judgment convicting him of repeated sexual assault of a child. Attorney Leonard D. Kachinsky has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2021-22).¹ Aull was informed of his right to respond to the no-merit report, but he has not filed a response. Having independently reviewed the entire

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

record as mandated by *Anders v. California*, 386 U.S. 738, 744 (1967), we conclude that there are no arguably meritorious issues for appeal.

The State charged Aull with one count each of repeated sexual assault of a child and incest based upon allegations by Aull's eleven-year-old autistic son that Aull had forced the child to perform oral sex on Aull on multiple occasions over a period of about two years. Aull agreed to plead no contest to a different subsection of the repeated sexual assault statute in exchange for the removal of a mandatory minimum sentence of twenty-five years and the dismissal of the incest count as a read-in offense. The circuit court accepted Aull's plea after conducting a plea colloquy, reviewing Aull's signed plea questionnaire with an attached jury instruction, and ascertaining that there was a factual basis to support the plea.

The circuit court ordered a presentence investigation report and subsequently held a sentencing hearing. After hearing from the parties, the victim, and the victim's grandmother, the court discussed factors related to the severity of the offense and Aull's character, and it explained how those factors related to the court's primary sentencing goals of punishment and protection of the public. The court emphasized the impact the offense had upon the victim. The court then sentenced Aull to fifteen years' initial confinement followed by ten years' extended supervision, with stipulated sentence credit of 361 days.

The no-merit report addresses the validity of the plea and sentence. Upon reviewing the record, we agree with counsel's conclusion that Aull has no arguably meritorious basis to challenge either the plea or the sentence. The circuit court conducted an adequate plea colloquy, and Aull does not assert that he misunderstood the charges or his rights. The sentence imposed

was within the maximum available penalties and was not unduly harsh, given the circumstances of the case.

Upon the foregoing,

IT IS ORDERED that the judgment of conviction is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Leonard D. Kachinsky is relieved of any further representation of David Aull in this matter pursuant to 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