OFFICE OF THE CLERK

WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

July 24, 2024

To:

Hon. Rebecca L. Persick
Circuit Court Judge
Electronic Notice

Hon. Natasha L. Torry
Circuit Court Judge
Electronic Notice

Chris Koenig
Clerk of Circuit Court
Sheboygan County Courthouse
Electronic Notice

Erica L. Bauer
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

Eric Scott Blad #707428
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:

2023AP2323-CRNM   State of Wisconsin v. Eric Scott Blad (L.C. #2021CF595)
2023AP2418-CRNM   State of Wisconsin v. Eric Scott Blad (L.C. #2021CF292)

Before Gundrum, P.J., Grogan and Lazar, 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).

In these consolidated no-merit appeals, Eric Scott Blad appeals from judgments, following a jury trial, convicting him of repeated sexual assault of the same child, third-degree sexual assault, incest, second-degree sexual assault of an intoxicated victim, and neglecting a child (consequence is sex offense). His appellate counsel filed a no-merit report pursuant to WIS.

STAT. RULE 809.32 (2021-22)[1] and ***Anders v. California***, 386 U.S. 738 (1967). Blad was advised of his right to file a response, and he has not responded. After reviewing the Records and counsel's report, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgments. *See* WIS. STAT. RULE 809.21.

In Sheboygan County Circuit Court case No. 2021CF292, the State charged Blad with incest, second-degree sexual assault of an intoxicated victim, and neglecting a child (consequence is sex offense) for incidents involving his daughter, Mary.[2] In Sheboygan County Circuit Court case No. 2021CF595, the State charged Blad with repeated sexual assault of the same child and third-degree sexual assault for incidents involving his step-daughter, Sarah. The complaint also notified Blad that, given the nature of the charges, the State was seeking to place Blad on lifetime supervision under WIS. STAT. § 939.615(2)(a).

The State moved to join the cases for trial, and, following a motion hearing, the circuit court joined the cases for trial. At trial, Mary testified that when she was sixteen years old, she consumed alcohol and marijuana that Blad gave her and became sick. Her head was spinning, and she felt woozy and tired. Blad had Mary sleep in his bed. The next thing she remembered was waking up and her pants and underwear were pulled halfway down her legs. Blad was squeezing her breasts and his fingers were rubbing inside her vagina. Blad then rubbed his penis on her vagina until he ejaculated. The next morning, Mary told her mother, who was at work at the time of the assault, what happened. Her mother kicked Blad out of the house.

---

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

[2] Pursuant to the policy underlying WIS. STAT. RULE 809.86(4), we use pseudonyms when referring to the victims in this case ("Mary" and "Sarah").

When Mary told her then seventeen-year-old sister Sarah that Blad was gone because he touched Mary, Sarah had "a mental breakdown." Sarah fell to the floor crying and screaming that it was her fault. Sarah testified that when she was twelve years old Blad began touching and putting his fingers inside her vagina and had her rub his penis until white liquid came out. Sarah reported this happened about three times per week. Sarah testified that when she turned thirteen, Blad began having sexual intercourse with Sarah and inserting his penis into her vagina until he ejaculated. Sarah estimated that between the ages of thirteen and sixteen she had sexual intercourse with Blad "about a hundred times or more." Sarah testified that the last time she had sexual intercourse with Blad occurred approximately two weeks before Sarah learned Blad had touched Mary. Sarah testified the intercourse was always painful and she told Blad, "I don't want to do this anymore at all and I'm serious." Sarah testified that she did not tell anyone because "I didn't want to tear apart the family …. I was planning to take it to the grave[.]"

Blad did not testify. The jury found Blad guilty as charged. The circuit court sentenced Blad to an aggregate sentence of fifty-five years' initial confinement and thirty-five years' extended supervision.[3] In Sheboygan County Circuit Court case No. 2021CF595, the circuit court placed Blad on lifetime supervision pursuant to WIS. STAT. § 939.615.

[3] Specifically, in Sheboygan County Circuit Court case No. 2021CF292, on the incest conviction, the circuit court sentenced Blad to ten years' initial confinement and ten years' extended supervision. On the second-degree-sexual-assault-of-an-intoxicated-victim conviction, the circuit court sentenced Blad to twenty years' initial confinement and ten years' extended supervision, consecutive to the incest conviction. On the neglecting-a-child-(consequence-is-sex-offense) conviction, the circuit court sentenced Blad to seven years and six months' initial confinement and five years' extended supervision, concurrent to the second-degree-sexual-assault conviction. In Sheboygan County Circuit Court case No. 2021CF595, on the repeated-sexual-assault-of-the-same-child conviction, the circuit court sentenced Blad to twenty-five years' initial confinement and fifteen years' extended supervision, consecutive to the sentence in Sheboygan County Circuit Court case No. 2021CF292. On the third-degree-sexual-assault

(continued)

The no-merit report addresses whether the complaints allege a sufficient factual basis to support each of the five charges; whether there were any issues with Blad's arrest, his initial appearances, his preliminary hearings, his informations, or his arraignments; whether there are any issues with the search warrants issued for Blad's cell phones and DNA; whether there are any issues with Blad's competency (he was competent to proceed); whether there are any issues with Blad's speedy trial demand (it was honored); whether there are any issues with the State's pretrial motion to admit other acts evidence (it was denied); whether there are any issues with the State's joinder motion (it was granted); whether there are any issues with Blad's jury trial, including jury selection, trial objections, jury instructions, deliberations, and/or verdicts; whether the evidence was sufficient to support Blad's convictions; whether the circuit court properly exercised its discretion at sentencing; and whether there are any potential issues involving ineffective assistance of trial counsel. This court is satisfied that the no-merit report properly analyzes the issues it raises as without arguable merit. We will, however, briefly address a few issues from the no-merit report.

First, counsel states she considered filing an ineffective assistance of counsel claim based on counsel's failure to challenge the search warrant for Blad's cell phone. When searching Blad's cell phone pursuant to the warrant, police found search terms and images of father/daughter-type pornography with explicit titles. Counsel identifies a potential issue with the probable cause portion of the warrant police relied on to search Blad's cell phone. However, counsel explains that she did not bring an ineffective assistance of counsel claim based on trial

---

conviction, the circuit court sentenced Blad to five years' initial confinement and five years' extended supervision, concurrent to the repeated-sexual-assault-of-the-same-child conviction.

counsel's failure to move to exclude the cell phone search results from trial because the trial court excluded this evidence on the grounds that its probative value was substantially outweighed by the danger of unfair prejudice.[4] Because the evidence was excluded from trial anyway, there is no merit to an argument that trial counsel was ineffective for failing to move to exclude this evidence. *See* ***Strickland v. Washington***, 466 U.S. 668, 687 (1984) (requiring a defendant to demonstrate both deficient performance and prejudice to prove ineffective assistance). We agree with counsel's analysis.

On that same vein, counsel acknowledges that the circuit court relied, in part, on the results from the cell phone search when sentencing Blad. However, counsel explains there is no merit to challenge the circuit court's sentence on this basis. Assuming the cell phone search results should have been suppressed, nothing prohibits a circuit court from relying on suppressed evidence at sentencing. *See* ***State v. Rush***, 147 Wis. 2d 225, 230, 432 N.W.2d 688 (Ct. App. 1988) ("Since we see no risk that illegal searches will be encouraged, there was no error in using the suppressed evidence to determine a proper sentence."). We agree with counsel's analysis.

Second, we discuss whether the evidence was sufficient to support Blad's convictions. When reviewing the sufficiency of the evidence, we may not substitute our judgment for that of the jury "unless the evidence, viewed most favorably to the state and the conviction, is so lacking 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, 507, 451 N.W.2d 752 (1990).

---

[4] The circuit court noted, in part, that police reported "none of the images appear to be child sex abuse material" and "[t]he subjects depicted appear to be over 18, although, some of the images are of too poor quality to determine an appropriate age."

Our review of the trial transcript persuades us that the State produced ample evidence to convict Blad of his crimes. That evidence included testimony from both Mary and Sarah, other witnesses, and law enforcement. We agree with counsel that a challenge to the sufficiency of the evidence would lack arguable merit.

Third, in regard to the circuit court's sentencing discretion, our review of the Records confirms that the court appropriately considered the relevant sentencing objectives and factors. *See* ***State v. Odom***, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695; ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The resulting sentence was within the maximum authorized by law. *See* ***State v. Scaccio***, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449. The sentence was 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). The circuit court also appropriately exercised its discretion to order lifetime supervision under WIS. STAT. § 939.615. Therefore, we agree there would be no arguable merit to a challenge to the court's sentencing discretion.

Our independent review of the Records reveals there was an issue with statements Blad made to law enforcement. At trial, the State "assum[ed] for the argument that there was a ***Miranda***[[5]] violation" in regard to these statements. The State therefore did not attempt to use any of Blad's statements in its case-in-chief. However, "[a] statement of the defendant made without the appropriate ***Miranda*** warnings, although inadmissible in the prosecution's case-in-chief, may be used to impeach the defendant's credibility if the defendant testifies to matters

[5] ***Miranda v. Arizona***, 384 U.S. 436 (1966).

contrary to what is in the excluded statement." ***State v. Mendoza***, 96 Wis. 2d 106, 118, 291 N.W.2d 478 (1980). "It is only if the statements are also found to be involuntary that their use for impeachment purposes is precluded." ***Id.***

Therefore, before Blad decided whether he would testify, the circuit court determined whether the statements Blad made to law enforcement were voluntary. Statements are voluntary if they are "the product of a free and unconstrained will, reflecting deliberateness of choice[.]" ***State v. Davis***, 2008 WI 71, ¶36, 310 Wis. 2d 583, 751 N.W.2d 332 (citation omitted). If law enforcement does not use coercion or other improper conduct to secure a statement, the statement is deemed voluntary. ***Id.*** Whether a statement is voluntary is a question of constitutional fact. ***State v. Jerrell C.J.***, 2005 WI 105, ¶16, 283 Wis. 2d 145, 699 N.W.2d 110.

Here, during trial but outside the presence of the jury, the circuit court watched the recording from Blad's interview with the detective and both the detective and Blad then testified. The court found that the length of the interview was reasonable, there were no threats, the atmosphere was relaxed and not confrontational, there was no deceit or misrepresentation, and Blad was not handcuffed and had a water bottle available to him. Although Blad had just been released from the hospital (Blad testified he was admitted to the hospital because he was suicidal after Mary reported to his wife what he did), the court noted that Blad testified he felt that the hospital did not do anything for him and that Blad was coherent, able to describe the events to the detective, and appropriately answered questions. The court also observed Blad was not under the influence of alcohol or marijuana during the time of the interview. Finally, the circuit court found that Blad was an adult with his GED, he had work history that included a supervisory role, and he had prior experience with the police and ultimately invoked one of his ***Miranda*** rights.

Based on the totality of the circumstances, the circuit court determined Blad's statements were voluntary and could be used for impeachment purposes if Blad testified. Applying the circuit court's factual findings to the legal standard for voluntariness, we conclude there is no arguable merit to challenge the circuit court's determination that Blad's statements were voluntary. After the circuit court determined Blad's statements to police were voluntary and could be used for impeachment purposes, Blad elected not to testify. There is no issue of arguable merit on this issue.

Our independent review of the Records does not disclose any potentially 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 and relieve Attorney Erica L. Bauer of further representation in these matters.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Erica L. Bauer is relieved of further representation of Eric Scott Blad in these matters. *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