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**DISTRICT III**

December 3, 2024

To:

Hon. Gregory B. Huber  
Reserve Judge

Leonard D. Kachinsky  
Electronic Notice

Kelly Schremp  
Clerk of Circuit Court  
Marathon County Courthouse  
Electronic Notice

Jennifer L. Vandermeuse  
Electronic Notice

Beau E.J. Farias 554838  
Stanley Correctional Inst.  
100 Corrections Dr.  
Stanley, WI 54768

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

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2022AP1998-CRNM      State of Wisconsin v. Beau E.J. Farias (L. C. No. 2019CF291)

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).**

Beau E.J. Farias appeals from a judgment, entered following a jury trial, convicting him of using a computer to facilitate a child sex crime and child enticement, both counts as a repeater. Appellate counsel, Leonard D. Kachinsky, filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2020-21),<sup>1</sup> and *Anders v. California*, 386 U.S. 738 (1967). Farias received a copy of the report, was advised of his right to file a response, and has responded. Appellate counsel filed a supplemental no-merit report. We have independently reviewed the

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

record, the no-merit report, the response, and the supplemental 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.

In 2019, the State charged Farias with one count of using a computer to facilitate a child sex crime, as a repeater, and one count of child enticement, also as a repeater. According to the criminal complaint, Farias made contact by computer with an undercover police officer who was posing as a fourteen-year-old girl on Facebook. The conversation eventually turned sexual, and the two agreed to meet at a motel. Farias was subsequently arrested and charged.

Prior to trial, Farias's counsel requested a competency examination. The examining psychologist found Farias competent to proceed. Trial counsel contested the findings; the circuit court, however, relying on the examiner's report, found Farias competent to stand trial.

The matter ultimately proceeded to trial where multiple witnesses, including law enforcement officers and a speech pathology expert, testified. The jury found Farias guilty as charged. The circuit court sentenced Farias to eight years' initial confinement followed by seven years' extended supervision on the computer-related charge, and a concurrent four years' initial confinement followed by four years' extended supervision on the child enticement charge. This no-merit report follows.

Appellate counsel raises four issues in his no-merit report: (1) whether the trial evidence was sufficient to sustain the verdicts; (2) whether the circuit court made any prejudicial procedural rulings; (3) whether Farias was deprived of effective assistance of counsel; and (4) whether the court erroneously exercised its sentencing discretion. We address each issue.

With regard to the sufficiency of the evidence, our standard of review is whether the evidence, viewed in the light most favorable to the State, is so insufficient in probative value and force that as a matter of law no reasonable jury could have found guilt beyond a reasonable doubt. *See State v. Poellinger*, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). The standard is the same whether the evidence is direct or circumstantial. *Id.* Here, law enforcement officers testified about the undercover operation used to apprehend Farias, his arrest, and the string of messages between Farias and the undercover officer. The defense raised an entrapment argument, calling a speech pathology expert to testify about Farias’s speech deficiencies and the fact that the officer initiated more sexual conversations than Farias. It was for the jury to weigh the evidence, resolve conflicts in the testimony, and draw inferences from the evidence. *See id.* at 506. Upon the evidence adduced at trial, we cannot say that the jury erred by finding guilt beyond a reasonable doubt for the charges. We conclude that no arguable merit could arise from a challenge to the sufficiency of the evidence.

Appellate counsel’s no-merit report next addresses whether any of the circuit court’s procedural rulings were prejudicial to Farias—particularly, the court’s decision to find Farias competent to stand trial. “[A] defendant is incompetent if he or she lacks the capacity to understand the nature and object of the proceedings, to consult with counsel, and to assist in the preparation of his or her defense.” *State v. Byrge*, 2000 WI 101, ¶27, 237 Wis. 2d 197, 614 N.W.2d 477. This court will uphold a circuit court’s competency determination unless that determination is clearly erroneous. *See State v. Garfoot*, 207 Wis. 2d 214, 225, 558 N.W.2d 626 (1997). In light of the examiner’s report and the standard of review, any further proceedings in regard to Farias’s competency would lack arguable merit.

In his response to the no-merit report, Farias contends that his trial counsel was ineffective by failing to challenge the competency report with evidence of previous competency evaluations in which the examiners found Farias incompetent. He also contends that the circuit court should have sua sponte ordered an additional competency evaluation. A review of the record shows that not only did trial counsel challenge the competency report, but also that the examiner took Farias's previous competency examinations into consideration when rendering his opinion. Counsel therefore was not ineffective. See *State v. Toliver*, 187 Wis. 2d 346, 360, 523 N.W.2d 113 (Ct. App. 1994) (counsel is not ineffective for failing to make meritless arguments). The court did not err by failing to sua sponte order a subsequent evaluation.

Appellate counsel also addresses whether any prejudicial errors occurred with regard to motions in limine, evidentiary rulings, voir dire, and opening statements. We agree with appellate counsel's determination that there are no issues of arguable merit that could arise as to these issues.

Appellate counsel next addresses whether there would be arguable merit to a claim of ineffective assistance of counsel. To prevail on a claim of ineffective assistance of counsel, a defendant must show both that counsel's performance was deficient and that the deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687-694 (1984). Appellate counsel claims that "Farias believes that his attorney was ineffective because she was not able to get a directed verdict on his behalf." As discussed, the evidence supported the jury's verdicts; therefore, counsel could not have been ineffective for failing to secure a directed verdict. See *Toliver*, 187 Wis. 2d at 360. Moreover, nothing in our independent review of the record supports a claim that trial counsel rendered ineffective assistance in any other regard.

With regard to the circuit court's sentencing decision, we note that sentencing is a matter for that court's discretion. See *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis.2d 535, 678 N.W.2d 197. At sentencing, a circuit court should consider the principal objectives of sentencing, including the protection of the community, the punishment and rehabilitation of the defendant, and deterrence to others. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. It should also determine which objective or objectives are of greatest importance. See *Gallion*, 270 Wis. 2d 535, ¶41. In seeking to fulfill the sentencing objectives, the circuit court must consider several primary factors, including the gravity of the offense, the character of the offender, and the protection of the public, as well as additional factors it may wish to consider. *State v. Odom*, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695. The weight to be given to each factor is committed to the court's discretion. *Id.*

Our review of the record confirms that the circuit court thoroughly considered the relevant sentencing objectives and factors, focusing particularly on the gravity of the offenses and the need to protect the public. The sentences the court imposed are 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 are not so excessive 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 court's sentencing discretion.

In addition to the issues discussed above,<sup>2</sup> our independent review of the record did not

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<sup>2</sup> We note that appellate counsel's no-merit report does not address whether any arguably meritorious issues arose as to the circuit court's colloquy with Farias when he elected not to testify, closing arguments, or the jury instructions. Our independent review of the record reveals no issues of arguable merit as to these stages in the proceedings.

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.

Upon the foregoing,

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

IT IS FURTHER ORDERED that Attorney Leonard D. Kachinsky is relieved of further representation of Beau E.J. Farias in this matter. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*