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DISTRICT IV

July 31, 2013

To:

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

2011AP2867-CR State of Wisconsin v. Molly M. King (L.C. # 2008CF1078)

Before Higginbotham, Sherman and Kloppenburg, JJ.

Molly King appeals a judgment of conviction for causing mental harm to a child and an order denying her motion for postconviction relief. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2011-12).¹ We affirm.

King argues that the conviction should be reversed and the case dismissed due to insufficiency of the evidence. We affirm the verdict unless the evidence, viewed most favorably

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

to the State and the conviction, is so insufficient in probative value and force that no reasonable trier of fact could have found guilt beyond a reasonable doubt. *State v. Poellinger*, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). The parties agree that to sustain the conviction we must find the evidence sufficient as to both forms of conduct that the State presented within the single count.

As to the first form of conduct, we agree with the State that King's argument is not sufficiently developed. See *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992). King states that trial counsel moved to dismiss the count at various times, but she does not provide record citations to those arguments, and then asserts only that she "adopts those arguments." As to the second form of conduct, King argues that the evidence was insufficient on the element of whether King caused mental harm to a child. However, King does not acknowledge or apply the "substantial factor" measure of causation on which the jury was instructed. Using that measure, we conclude that the testimony of the State's expert is sufficient to support this element by showing the impact on the child of the delay in receiving counseling.

King also argues that she should receive a new trial because the count was duplicitous. She notes that, although the jury was instructed that it must be unanimous as to which form of conduct was the basis for the conviction, the jury was not asked to state whether it found her guilty of the first or second form of conduct (or both). As a result, King argues, the circuit court did not know at sentencing which conduct she had been convicted of, and she was deprived of her due process right to be sentenced for the conduct on which she was convicted. King has not persuaded us that the count was duplicitous, in light of the unanimity instruction that was given. The conduct she was sentenced for was causing mental harm to the child.

IT IS ORDERED that the judgment and order appealed from are summarily affirmed under WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals