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November 25, 2013

To:

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

2012AP2209-CRNM State of Wisconsin v. Raymond Glen Fox, Jr. (L.C. #2011CF3104)

Before Lundsten, Sherman and Kloppenburg, JJ.

Attorney Michael Backes, appointed counsel for Raymond Fox, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2011-12)¹ and *Anders v. California*, 386 U.S. 738 (1967). Counsel provided Fox with a copy of the report, and both counsel and this court advised him of his right to file a response. Fox has not responded. We conclude that this case is appropriate for summary disposition. See WIS. STAT. RULE 809.21. After our independent

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

review of the record, we conclude there is no arguable merit to any issue that could be raised on appeal.

A jury found Fox guilty of one count of first-degree sexual assault of a child. The court imposed a sentence of four years of initial confinement and four years of extended supervision.

The no-merit report states that Fox believes his trial counsel was ineffective by not calling additional witnesses. Appellate counsel asserts that he was not able to obtain information from the potential witnesses. Based on this very limited information which does not inform us about what information Fox claims the witness would have provided, we see no basis to conclude an issue of arguable merit exists on this ground.

The no-merit report states that Fox believes his trial counsel was ineffective in the manner in which he challenged the victim's credibility by using the layout of the apartment and light from a television. This appears to be a reference to the fact that another adult was present in the residence and could have seen the events alleged. As the no-merit report points out, the other adult testified about those matters. The no-merit report does not state with any further specificity what more Fox believes trial counsel should have done. Given the existing testimony, and the lack of a specific allegation as to what more should have been done, we have no basis to conclude that an issue with arguable merit exists on this ground.

The no-merit report addresses whether the court erroneously exercised its sentencing discretion. The standards for the circuit court and this court on sentencing issues are well established and need not be repeated here. *See State v. Gallion*, 2004 WI 42, ¶¶17-51, 270 Wis. 2d 535, 678 N.W.2d 197. In this case, the court considered appropriate factors such as the seriousness of the offense, the effect on the family, Fox's failure to accept responsibility for the

crime, Fox's need for treatment, and the need to protect the community. The court did not consider improper factors, and reached a reasonable result. There is no arguable merit to this issue.

Our review of the record discloses no other potential issues for appeal.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Backes is relieved of further representation of Fox in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals