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March 19, 2014

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

2013AP2722-CRNM State of Wisconsin v. Ricky R. Strobel (L.C. # 2012CF81)

Before Brown, C.J., Neubauer, P.J., and Reilly, J.

Ricky R. Strobel appeals from a judgment convicting him of attempted first-degree sexual assault, false imprisonment, second-degree recklessly endangering safety, and battery. Strobel's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2011-12)¹ and *Anders v. California*, 386 U.S. 738 (1967). Strobel received a copy of the report, was advised of his right to file a response, and has elected not to do so. After reviewing the record

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

and counsel's report, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment. *See* WIS. STAT. RULE 809.21.

On March 14, 2012, the State filed a criminal complaint charging Strobel with attempted first-degree sexual assault, false imprisonment, second-degree recklessly endangering safety, and battery. The charges stemmed from allegations that Strobel had restrained, battered, and attempted to engage in nonconsensual sexual intercourse with an adult female by threatening her with a knife in the city of Hartford, on February 3, 2012. The case was tried to a jury, and Strobel was found guilty on all counts. The circuit court imposed an aggregate sentence of twenty years of initial confinement and fifteen years of extended supervision.

The no-merit report addresses the following appellate issues: (1) whether the evidence at Strobel's jury trial was sufficient to support his convictions and (2) whether the circuit court properly exercised its discretion at sentencing.

With respect to the sufficiency of the evidence, we may not substitute our judgment for that of the jury unless the evidence, viewed most favorable to the State and the convictions, 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). Our review of the trial transcripts persuades us that the State produced ample evidence to convict Strobel of his crimes. Accordingly, we agree with counsel that any challenge to the sufficiency of the evidence would lack arguable merit.

With respect to the sentence imposed, the record reveals that the circuit court's sentencing decision had a "rational and explainable basis." *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197. In imposing its sentence, the court considered the seriousness of the offenses, Strobel's character, and the need to protect the public. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Under the circumstances of the case, which were aggravated by Strobel's history of violent offenses, the sentence does not "shock public sentiment and violate the judgment of reasonable people concerning what is right and proper." *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We agree with counsel that a challenge to Strobel's sentence would lack arguable merit.

In addition to the issues raised in the no-merit report, we considered other potential issues that arise in cases tried to a jury, e.g., jury selection, objections during trial, confirmation that the defendant's election to testify is knowingly made, use of proper jury instructions, etc. Here, there was no error in the jury selection process, nor was there any indication that any juror who ultimately served could not be fair and impartial. Objections during Strobel's trial were relatively few in number and properly ruled on. When Strobel elected to testify at trial, the circuit court conducted a proper colloquy with him about his right not to testify. The jury instructions accurately conveyed the applicable law and burden of proof. Accordingly, we conclude that such issues would lack arguable merit.

Our independent review of the record 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 William E. Schmaal of further representation in this matter.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney William E. Schmaal is relieved of further representation of Strobel in this matter.

Diane M. Fremgen
Clerk of Court of Appeals