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DISTRICT IV

September 18, 2014

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

2013AP20-CRNM State of Wisconsin v. Christopher C. Lane (L.C. # 2011CF1308)

Before Lundsten, Sherman and Kloppenburg, JJ.

Christopher Lane appeals a judgment convicting him, following a jury trial, of child abuse contrary to WIS. STAT. § 948.03(2)(b) (2011-12).[1] Attorney Farheen Ansari has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32; ***Anders v. California***, 386 U.S. 738, 744 (1967); and ***State ex rel. McCoy v. Wisconsin Court of Appeals***, 137 Wis. 2d 90, 403 N.W.2d 449 (1987), *aff'd*, 486 U.S. 429 (1988). The no-merit report addresses whether the evidence was sufficient to support the verdict, whether there were any

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

procedural errors that would entitle Lane to a new trial, and whether the sentence imposed was a proper exercise of the circuit court's discretion. Lane was sent a copy of the report, but did not file a response. Upon reviewing the entire record, as well as the no-merit report, we conclude that there are no arguably meritorious appellate issues.

We first address the issue of whether there was sufficient credible evidence to support the guilty verdict. Our standard of review to determine whether the evidence was sufficient to support the conviction is that "'an appellate court may not substitute its judgment for that of the trier of fact unless the evidence, viewed most favorably to the [S]tate and the conviction, is so [insufficient] in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt.'" ***State v. Hayes***, 2004 WI 80, ¶56, 273 Wis. 2d 1, 681 N.W.2d 203 (citation omitted). The no-merit report discusses the evidence in relation to the elements of child abuse, which are: (1) the defendant caused bodliy harm to the child, (2) the defendant intentionally caused the bodily harm, and (3) the victim was under 18 years of age. WIS. STAT. § 948.03(2)(b).

Lane was charged with child abuse with intentional causation of bodily harm for an incudent that occured on July 2, 2011. The criminal complaint alleged that Lane struck his girlfriend's daughter in the face and caused her face to swell and her lip to split. The daughter, who was ten years old at the time of the incident, testified at trial. She testified that she truthfully answered questions during her interview with a trained forensic interviewer at Safe Harbor. A video of the interview was played for the jury. Social worker Heather Stertz testified to being present during the Safe Harbor interview of the child. Stertz also testfied that Lane told her he had struck the child in the face on the day Stertz came to allow counsel to investigate the matter on behalf of the county. Stertz testified that, when she interviewed Lane, he demonstrated

how he had struck the child. In light of all the evidence presented, we agree with counsel that there would be no arguable merit to a claim that the evidence was insufficient.

Our review of the trial record also discloses no procedural issues of arguable merit. The rulings made on the motions in limine were proper. There is no basis to challenge jury selection. Evidentiary objections throughout the trial were properly ruled upon and no potentially objectionable testimony was elicited. The trial court conducted a proper colloquy with Lane about his decision to testify. The jury instructions accurately conveyed the applicable law and burden of proof.

We also agree with counsel's assessment that there would be no arguable merit to an argument that the circuit court erroneously exercised its sentencing discretion. The court imposed three years of probation with the possibility of Lane terminating probation one year early upon meeting certain conditions. The components of the bifurcated sentence imposed were within the applicable penalty ranges. *See* WIS. STAT. §§ 948.03(2)(b) (classifying intentional child abuse as a Class H felony); 973.01(2)(b)8 and (d)5 (providing maximum terms of three years of initial confinement and three years of extended supervision for a Class H felony).

There is a presumption that a sentence "well within the limits of the maximum sentence" is not unduly harsh, and we are satisfied that the sentence imposed here was not "so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances." ***State v. Grindemann***, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. *See* ***State v. Allen***, 2010 WI 89, ¶¶81-82, 328 Wis. 2d 1, 786 N.W.2d 124. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of ***Anders*** and WIS. STAT. RULE 809.32.

Accordingly,

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

IT IS FURTHER ORDERED that Farheen Ansari is relieved of any further representation of Christopher Lane in this matter pursuant to WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals