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November 10, 2014

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

2013AP1767-NM In the interest of Kevon M., a person under the age of 17: State of Wisconsin v. Kevon M. (L.C. # 2011JV825)

Before Sherman, J.[1]

Kevon M. appeals from an order adjudicating him delinquent for one count of fourth-degree sexual assault of a child, A.E. *See* WIS. STAT. § 940.225(3m). After a bench trial, the circuit court ordered one year of juvenile probation with placement in his mother's home. Kevon's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32, and

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

Anders v. California, 386 U.S. 738 (1967). The no-merit report addresses the sufficiency of the evidence to support the court's delinquency finding and whether the circuit court properly exercised its discretion at the dispositional hearing. Kevon was sent a copy of the report, but has not filed a response. Upon consideration of the report and an independent review of the record, we conclude that the order may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. WIS. STAT. RULE 809.21.

"Disposition of a child's delinquency adjudication lies in the sound discretion of the court." ***State v. James P.***, 180 Wis. 2d 677, 682, 510 N.W.2d 730 (Ct. App. 1993). "A presumption of reasonableness supports a children's court disposition." ***Id.*** "The exercise of discretion requires judicial application of relevant law to the facts of record to reach a rational conclusion." ***Id.*** at 683. In order to enter a finding of delinquency for the sexual assault of A.E., the court was required to prove, beyond a reasonable doubt, that Kevon (1) had sexual contact with A.E. and (2) did so without her consent. *See* WIS. STAT. § 940.225(3m); *see also* WIS. STAT. § 938.02(3m) (defining "delinquent" as "a juvenile who is 10 years of age or older who has violated any state or federal law, except as provided in [WIS. STAT. §§] 938.17, 938.18 and 938.183 …). We are satisfied that the evidence in the record is sufficient to satisfy these elements, such that there would be no arguable merit to challenging the court's delinquency finding on appeal.

The State filed a delinquency petition alleging one count of fourth-degree sexual assault of A.E., a twelve-year-old girl. Kevon demanded a court trial, which occurred on January 19, 2012. At trial, A.E. testified that she was at a park with A.K. and A.F. when Kevon joined them. A.E. said that Kevon touched her vagina and her breast. The police officer who interviewed

A.E. at her middle school testified at trial that A.E. said that she told Kevon to stop, but that he did not stop.

A.E.'s friend, A.K., also testified at trial. She stated that Kevon "started touching [A.E.] and hugging her[.]" A.K. further stated that she saw Kevon's hand touch A.E.'s waist. When she talked to a police officer later that day about what had happened, A.K. recalled that she told the officer that Kevon grabbed A.E.'s butt and that A.E. was visibly uncomfortable. Kevon did not testify at trial. In light of all of the evidence, we are satisfied that the circuit court properly exercised its discretion in entering a finding of delinquency for the sexual assault charge, such that a challenge to that finding on appeal would be without arguable merit.

We also agree with Kevon's counsel that there would be no arguable merit to challenging the disposition of the case. At the dispositional portion of the hearing, the State recommended one year of probation with placement in his mother's home, that Kevon not have any contact with A.E. or any unsupervised contact with children under twelve, that he submit a DNA sample, that he comply with sex offender treatment, that he not seek out or expose himself to pornographic materials, and that he compose a letter of apology to A.E. Kevon's probation officer and his attorney also recommended one year of probation with placement in the home. Kevon's counsel asked that Kevon not be required to submit a DNA sample and that any no contact order specify that Kevon not have unsupervised contact with any children under age ten, since Kevon had a ten-year-old brother at the time.

The circuit court ordered Kevon to one year of probation with placement in his mother's home. *See* WIS. STAT. § 938.34(3)(a) (authorizing in-home placement). The court ordered that services be provided by Wraparound Milwaukee, and specified that Wraparound has the

authority to recommend out-of-home placement if it becomes necessary. The court also ordered that Kevon not do any babysitting and that he complete sex offender treatment and any other programming deemed appropriate through Wraparound. The court further ordered that Kevon not possess or expose himself to pornographic materials and that he write an apology letter to A.E. to be delivered to her via his probation agent. The court denied the State's request for a DNA sample.

"We review a circuit court's dispositional order for an erroneous exercise of discretion." ***State v. Richard J.D.***, 2006 WI App 242, ¶5, 297 Wis. 2d 20, 724 N.W.2d 665. In determining a disposition, the circuit court is to consider the seriousness of the offense, the need to protect the community from juvenile crime, the need to prevent further delinquent acts, and the juvenile's needs for care and treatment. ***Id.***, ¶13. The court did so here, stating on the record that it needed to address the type of "inappropriate touching" that Kevin had engaged in and that the "bigger picture" required prevention of later sexual offenses. The court also considered Kevon's needs for care and treatment, stating that placement of Kevon in his mother's home was appropriate because his mother was involved and helpful, and because Kevon was making progress at school. In light of the circuit court's reasoning stated on the record, we are satisfied that the court properly exercised its discretion in entering its dispositional order, such that any challenge to that order on appeal would be without merit.

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that counsel is relieved of any further representation of Kevon M. in this matter pursuant to WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals