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**DISTRICT I/IV**

January 15, 2015

*To*:

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

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2013AP1811-CRNM State of Wisconsin v. William M. Radix (L.C. # 2011CF4740)

Before Blanchard, P.J., Higginbotham and Kloppenburg, JJ.

Attorney Mark Rosen, appointed counsel for William Radix, has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2011-12)[1]; ***Anders v. California***, 386 U.S. 738, 744 (1967). The no-merit report addresses: (1) the sufficiency of the evidence to support the jury verdicts; and (2) whether there would be arguable merit to a challenge to the sentence imposed by the circuit court. Radix has filed a response to the no-merit

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

report which, although not entirely clear, appears to set forth Radix's version of the events that led to the charges against him and his claims of circuit court error. Upon independently reviewing the entire record, as well as the no-merit report and response, we agree with counsel's assessment that there are no arguably meritorious appellate issues. Accordingly, we affirm.

Radix was charged with one count of first-degree child sexual assault, one count of exposing genitals to a child, and one count of attempted first-degree sexual assault of a child. Radix pled not guilty to the charges. The case proceeded to a jury trial, and the jury returned guilty verdicts for both of the child sexual assault charges and a not guilty verdict for the exposing genitals charge. Radix was convicted of first-degree child sexual assault and attempted first-degree child sexual assault, and the circuit court sentenced Radix to a total of ten years of initial confinement and ten years of extended supervision.

The no-merit report addresses whether the evidence was sufficient to support the convictions. A claim of insufficiency of the evidence requires a showing that "the evidence, viewed most favorably to the state and the conviction, is so insufficient in probative value and force that it can be said as a matter of law that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt." ***State v. Poellinger***, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). We agree with counsel's assessment that there would be no arguable merit to an argument that that standard has been met here. The evidence at trial, including testimony by the child victims, was sufficient to support the jury verdicts finding Radix guilty of first-degree child sexual assault and attempted first-degree child sexual assault.

To the extent that Radix's no-merit response may be asserting that there would be arguable merit to a claim that the evidence was insufficient, we disagree. As explained above,

the evidence at trial was sufficient to support the jury verdicts as to both counts. Radix sets forth his version of the events that led to the charges in this case, which differs from the testimony of the child victims. However, Radix's assertion that the victims were untruthful in their testimony does not render the victims' testimony insufficient to support the jury verdicts. The jury was entitled to rely on the victims' testimony in finding Radix guilty of the two sexual assault charges.

The no-merit report also addresses whether a challenge to Radix's sentence would have arguable merit. Our review of a sentence determination begins "with the presumption that the trial court acted reasonably, and the defendant must show some unreasonable or unjustifiable basis in the record for the sentence complained of." ***State v. Krueger***, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). The record establishes that Radix was afforded the opportunity to address the court prior to sentencing. The court explained that it considered facts pertinent to the standard sentencing factors and objectives, including Radix's character, the seriousness of the offenses, and the need to protect the public. *See* ***State v. Gallion***, 2004 WI 42, ¶¶39-46 & n.11, 270 Wis. 2d 535, 678 N.W.2d 197. The court sentenced Radix to a total of ten years of initial confinement and ten years of extended supervision. The sentence was well within the maximum Radix faced and, given the facts of this case, there would be no arguable merit to a claim that the sentence was unduly harsh or excessive. *See* ***State v. Stenzel***, 2004 WI App 181, ¶21, 276 Wis. 2d 224, 688 N.W.2d 20 (a sentence is unduly harsh or excessive "only where the sentence is 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" (citation omitted)). Additionally, the court granted Radix 246 days of

sentence credit, on counsel's stipulation. We discern no erroneous exercise of the court's sentencing discretion.

To the extent that Radix's no-merit response attempts to argue that there would be arguable merit to any other claim of circuit court error, we disagree. Radix complains that he was not present for a final pretrial conference held in February 2012. The record indicates that a final pretrial conference with the court and counsel was held on February 29, 2012, off the record, and that Radix was not present. However, a final pretrial conference is not a proceeding at which a defendant is entitled to be present under WIS. STAT. § 971.04(1), and Radix does not explain why he believes his presence was necessary at that conference. Radix also complains that the circuit court should have reduced his bail and that the conditions of his jail cell—specifically, no heat, a sink with constant running water and no mirror—violated the Eighth Amendment's prohibition of cruel and unusual punishment. However, we discern no arguable merit to a challenge to the judgment of conviction or sentence premised on those assertions.

Finally, Radix asserts in his no-merit response that he should be granted a new trial, the charges against him should be dismissed, or he should be placed on probation. However, upon our review of the entire record, the no-merit report, and the no-merit response, we discern no arguable basis for reversing the judgment of conviction and sentence. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of ***Anders*** and WIS. STAT. RULE 809.32.

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

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

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*Diane M. Fremgen*
*Clerk of Court of Appeals*