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DISTRICT I

May 20, 2015

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

2012AP2153-CRNM State of Wisconsin v. Carlos D. Lindsey (L.C. #2010CF4876)

Before Curley, P.J., Kessler and Brennan, JJ.

A jury found Carlos D. Lindsey guilty of five counts of first-degree sexual assault of a child. The circuit court imposed an aggregate twenty-four year term of imprisonment bifurcated as sixteen years of initial confinement and eight years of extended supervision. The circuit court also ordered Lindsey to pay a DNA surcharge. Lindsey appeals.

Lindsey's appointed postconviction and appellate counsel, Attorney Paul G. Bonneson, filed a no-merit report on Lindsey's behalf in August 2013. *See* WIS. STAT. RULE 809.32 (2013-14).[1] In the report, Attorney Bonneson discussed the sufficiency of the evidence, the circuit court's exercise of sentencing discretion, Lindsey's *pro se* motion to vacate the DNA surcharge, and Lindsey's belief that the jury selection process was constitutionally flawed. Thereafter, we granted a series of extensions to permit Lindsey time to prepare a response to the no-merit report. Just before the last deadline expired, Lindsey filed a document in the supreme court that it construed as a petition for review. That petition was denied as premature, and the matter was submitted to this court for resolution in June 2014 without a response from Lindsey.

Following a preliminary review of the record and the no-merit report, we asked Attorney Bonneson to file a supplemental no-merit report to address jury selection. Specifically, we noted his advisement in the no-merit report that Lindsey believed the prosecutor had used peremptory strikes to remove jurors based on their race in violation of ***Batson v. Kentucky***, 476 U.S. 79 (1986). We further noted that, although Attorney Bonneson described the record as lacking anything to support Lindsey's concern, Attorney Bonneson did not indicate he took any steps beyond record review to explore Lindsey's contention. We asked Attorney Bonneson to tell us whether anything outside the record supported Lindsey's claim that trial counsel should have objected to the jury selection process. After receiving a number of extensions from this court, Attorney Bonneson filed a supplemental report in late December 2014, stating that Lindsey had not responded to requests for information and thus had provided no basis for further pursuit of the ***Batson*** issue.

[1] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

On January 2, 2015, Lindsey submitted a document titled "statement of merits." In the document, Lindsey raised several allegations of trial counsel's ineffectiveness and alleged a jury instruction error, but he did not complain about jury selection or suggest any defect in that process. We accepted Lindsey's January 2, 2015 submission as a response to the supplemental no-merit report, and we provided a copy to appellate counsel. Counsel elected not to respond.

We view this matter as ready for disposition. We have independently considered the record, counsel's no-merit reports, and Lindsey's objections to the reports.[2] We conclude that no arguably meritorious issues exist for an appeal. We summarily affirm. *See* WIS. STAT. RULE 809.21.

In a criminal complaint filed in September 2010, the State alleged that Lindsey sexually assaulted three boys, namely, JDM, born March 9, 2001, CDM, born April 30, 2002, and SEJ, born September 25, 2001. The State indicated each victim was a grandson of Cheryl M. and that she was romantically involved with Lindsey at the time of the assaults. Subsequently the State filed an information charging: (1) two counts of sexually assaulting JDM between the dates of June 1, 2010, and September 19, 2010; (2) one count of sexually assaulting JDM between the dates of August 1, 2010, and September 19, 2010; (3) two counts of sexually assaulting CDM between the dates of December 1, 2009, and September 19, 2010; and (4) one count of sexually assaulting SEJ between the dates of December 1, 2009, and September 19, 2010, all in violation

[2] In 2012, Lindsey submitted documents to this court objecting to the no-merit report more than ten months before Attorney Bonneson filed it. In the submission, Lindsey claimed he did not have a chance to confront his accusers, asserted he has received various mental health diagnoses, and complained about the conclusions of "consultant Lehmann PhD" who, Lindsey implied, conducted a psychological evaluation of him at his counsel's request. We assure Lindsey that we have considered his 2012 submission in assessing whether this case presents any arguably meritorious issues for appeal.

of WIS. STAT. § 948.02(1)(e) (2009-10). Lindsey pled not guilty to the charges. On August 8, 2011, the matter proceeded to a jury trial on six counts of first-degree sexual assault of a child who had not reached the age of thirteen years.

While the trial was under way, the State moved to dismiss one of the two charges involving CDM. The State also moved to file an amended information alleging that Lindsey committed each of the remaining five sexual assaults on or after December 24, 2009. Lindsey did not oppose the State's motions, and the State filed an amended information alleging five counts of first-degree sexual assault of a child under thirteen years of age during the period from December 24, 2009, until September 19, 2010. The jury returned five guilty verdicts.

We first consider whether sufficient evidence supports the jury's verdicts. Before the jury could find Lindsey guilty of any of the five charges, the State needed to prove beyond a reasonable doubt that: (1) Lindsey had sexual contact with the victim; and (2) the victim was under the age of thirteen years at the time of the sexual contact. *See* WIS JI—CRIMINAL 2102E; WIS. STAT. § 948.02(1)(e) (2009-10).

The State presented to the jury audiovisual recordings of the forensic interviews police conducted with JDM, CDM, and SEJ. *See* WIS. STAT. § 908.08(3). Each child testified in person immediately after presentation of his recorded interview. *See* § 908.08(5)(a).

JDM told the jury that he was ten years old. He said that his grandmother, Cheryl M., had a former boyfriend named Carlos Lindsey, and JDM identified Lindsey in the courtroom. JDM then described three separate incidents in which Lindsey had sexual contact with JDM while Lindsey was living with Cheryl M. On one occasion, towards the end of the previous school year, Lindsey rubbed his penis against JDM while he was lying face down in the back

room of his grandmother's house. On a second occasion, when JDM and Lindsey were in a garage, Lindsey rubbed his penis against JDM's buttocks, which JDM called his "booty." On a third occasion, when JDM was watching TV in his grandmother's bedroom, Lindsey put his penis into JDM's "booty." JDM said each of the three incidents occurred after his ninth birthday in March.

During cross-examination, JDM said he had seen Cheryl M. arguing with Lindsey. JDM admitted that he did not like Lindsey when he argued with Cheryl M.

CDM said he was eight years old. He said his grandmother Cheryl had a friend named Carlos, and CDM identified Lindsey as that friend. CDM used a doll to show the jury a man's "private part." He went on to testify that, on an occasion when he was at his grandmother's house and the weather was warm, Lindsey put his bare private part into CDM's "butt." During direct testimony, CDM denied saying some of the things he is heard to say during the forensic interview. On cross-examination, he acknowledged that he was angry with Lindsey because he threw keys at CDM and argued with CDM's grandmother.

SEJ testified that he was nine years old. He said his grandmother, Cheryl M., had a friend named Carlos Lindsey, and SEJ identified Lindsey in the courtroom. SEJ described an incident when Lindsey took SEJ into a bedroom in his grandmother's house. There, Lindsey rubbed his penis, which SEJ called a "peanut," against the rear of SEJ. On cross-examination, SEJ said he had seen Lindsey hit Cheryl M., and SEJ said he "didn't like that."

Kejuana J., JDM's mother, described how JDM's accusations against Lindsey came to light. She said that, on September 19, 2010, she was walking with JDM when he confided that Lindsey "was doing nasty stuff ... humping on me." Kejuana J. said she immediately told

Sheena M., the mother of CDM and SEJ, about the things JDM had said. Kejuana J. then took JDM to the hospital, where she also spoke to police. On cross examination, Kejuana J. admitted that JDM did not complain about Lindsey at any time before September 19, 2010, even though Lindsey was present on several occasions earlier in 2010 when JDM visited his grandmother at her home and when he attended the daycare center she operated.

Amanda Didier testified as an expert witness for the State regarding the dynamics of child sexual abuse and its disclosure. She said she had a master's degree in counselling and is a board-certified counsellor with an area of specialization in child abuse matters. After describing her education and experience, she explained to the jury that children frequently cannot provide an exact date or time for their experiences. She also explained that children often do not relate events in chronological order and tend to disclose what is important to the child making the disclosure. On cross examination, she acknowledged that a child may be unable to provide exact details and may modify the story he or she tells because the child is being dishonest.

Lindsey testified on his own behalf. He told the jury that he was nineteen years old and that he did not "mess with kids. [He was] a kid [him]self." He said he had a romantic relationship with Cheryl M. and moved in with her soon after they met on Christmas Eve 2009. Lindsey admitted that on occasion he was physically aggressive with Cheryl M. and that her grandchildren saw some of this aggression. He suggested that the children's observations led to false accusations against him. Lindsey maintained that he never spent time alone with the children because Cheryl M. had warned him that her family was "dirty." Additionally, the parties stipulated that Lindsey was in custody on an unrelated matter during certain specified periods during the spring and summer of 2010.

When considering a challenge to the sufficiency of the evidence, we apply a highly deferential standard. We may not substitute our judgment for that of the jury unless the evidence, viewed most favorably to the State and the convictions, is so lacking in probative value and force that no reasonable jury could have found guilt beyond a reasonable doubt. *See* ***State v. Poellinger***, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990). This court will uphold the verdicts if any possibility exists that the jury could have drawn the inference of guilt from the evidence. ***Id.*** When the record contains facts that support more than one inference, this court must accept the inference drawn by the jury unless the evidence on which that inference is based is incredible as a matter of law. ***Id.*** at 506-07.

The State presented ample evidence to support the allegations of sexual assault. A claim that the evidence was insufficient would be frivolous within the meaning of ***Anders***.

We next consider whether the record shows that Lindsey knowingly and voluntarily waived his right to remain silent. Appellate counsel did not discuss this issue. The right not to testify is fundamental. ***State v. Denson***, 2011 WI 70, ¶55, 335 Wis. 2d 681, 799 N.W.2d 851. Our supreme court recommends, but does not require, a colloquy on the record to ensure that a defendant who elects to testify has knowingly and voluntarily waived the right not to testify. *See* ***id.***, ¶¶66-67. In this case, the circuit court conducted a colloquy with Lindsey and established that he wanted to testify, understood his right not to testify, had discussed the matter with his counsel, and that no one threatened him or promised him anything to induce him to testify. The colloquy fully complies with the supreme court's recommendations and demonstrates Lindsey's knowing, intelligent and voluntary decision to waive his right to remain silent and to testify on his own behalf. *See* ***id.***, ¶¶60-61, 67. Further pursuit of this issue would lack arguable merit.

We next consider whether Lindsey could pursue an arguably meritorious claim that the circuit court erred when it overruled his objection to admitting as evidence the forensic interview with JDM. Appellate counsel did not discuss this issue. We independently conclude that no basis exists for an appellate challenge to admitting any of the forensic interviews with the three children. Each child testified at trial, and each child was younger than twelve years old when he testified. Under these circumstances, the circuit court is required to admit the recorded interviews. *See* WIS. STAT. § 908.08(1) & (3)(a)1.; *see also* ***State v. James***, 2005 WI App 188, ¶¶9-12, 20-25, 285 Wis. 2d 783, 703 N.W.2d 727 (circuit court must admit videotaped statement that satisfies § 908.08(3)).

We have also considered whether the record reveals errors that trial counsel did not preserve. We must consider any such potential postconviction challenge in an ineffective-assistance-of-counsel context. *See* ***State v. Carprue***, 2004 WI 111, ¶47, 274 Wis. 2d 656, 683 N.W.2d 31 (in the absence of an objection at trial, we address issues under the ineffective-assistance-of-counsel rubric). Appellate counsel did not consider any such potential claims, but doing so is appropriate. *See* ***State ex rel. Panama v. Hepp***, 2008 WI App 146, ¶27, 314 Wis. 2d 112, 758 N.W.2d 806 (no-merit proceeding permits examination of whether waived issue may support a claim of ineffective assistance of trial counsel).

We assess claims of ineffective assistance of counsel under the two-prong test described in ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). To prevail, the defendant must show that his or her attorney's performance was deficient and that the deficiency prejudiced the defense. ***Id.*** Whether the lawyer's performance was deficient and whether the deficiency was prejudicial are questions of law that we review *de novo*. ***State v. Johnson***, 153 Wis. 2d 121, 128,

449 N.W.2d 845 (1990). If a defendant fails to satisfy one component of the analysis, a reviewing court need not address the other. ***Strickland***, 466 U.S. at 697.

Lindsey could not pursue an arguably meritorious claim that trial counsel should have objected on hearsay grounds to Kejuana J.'s testimony describing JDM's disclosure of sexual abuse. Hearsay is an out-of-court statement offered to prove the truth of the matter asserted. *See* WIS. STAT. § 908.01(3). In this case, however, the State offered Kejuana J.'s testimony about JDM's disclosures not to prove their truth but to show how JDM's accusations against Lindsey came to light and to show the steps Kejuana J. took in response.[3] "'The hearsay rule does not prevent a witness from testifying as to what he heard; it is rather a restriction on the proof of fact through extrajudicial statements.'" ***State v. Curbello–Rodriguez***, 119 Wis. 2d 414, 427, 351 N.W.2d 758 (Ct. App. 1984) (citation omitted).

For similar reasons, we conclude that the State did not offer hearsay testimony from Sheena M., when she described CDM's and SEJ's initial allegations that Lindsey abused them. Sheena M.'s testimony describing her sons' disclosures was limited. She told the jury that she questioned her sons after speaking to Kejuana J. In response, CDM and SEJ initially denied that Lindsey "did anything," but, when pressed, CDM said Lindsey "humped" CDM, and SEJ said Lindsey also "d[id] something" to SEJ. These limited statements offered no more testimony than was necessary for the jury to understand why Sheena M. thought something might have

[3] The State prefaced the questions by explaining: "I'm going to ask you a few questions about the circumstances of [JDM]'s disclosure and what you did in response."

happened to her sons and took them to the hospital for an examination in September 2010. Accordingly, the testimony was not hearsay. *See* WIS. STAT. § 908.01(3).

Because neither Kejuana J. nor Sheena M. offered hearsay testimony, trial counsel had no obligation to raise a hearsay objection. An attorney has no obligation to take meritless action. *See* ***State v. Toliver***, 187 Wis. 2d 346, 360, 523 N.W.2d 113 (Ct. App. 1994).

We next consider whether Lindsey could pursue an arguably meritorious claim that his trial counsel should have objected to the amended information filed during the trial. The amended information modified the timeframe in which the sexual assaults allegedly occurred. The court may allow an amendment of the information at trial to conform to the evidence if the amendment is not prejudicial to the defendant. *See* WIS. STAT. § 971.29(2). The decision to allow an amendment rests in the circuit court's discretion. *See* ***State v. Malcom***, 2001 WI App 291, ¶23, 249 Wis. 2d 403, 638 N.W.2d 918.

Here, the amendment requested by the State conformed to the evidence establishing the period in which Lindsey interacted with Cheryl M. and her family. Further, the record reveals no prejudice to Lindsey. Lindsey's defense was built around his contentions that he was never alone with the children and that they were angry with him for reasons having nothing to do with sexual assault. Moreover, "[t]ime is not of the essence in sexual assault cases." ***State v. Fawcett***, 145 Wis. 2d 244, 250, 426 N.W.2d 91 (Ct. App. 1988). Accordingly, we conclude that Lindsey could not pursue a meritorious claim that his trial counsel was ineffective for foregoing an objection to the amended information. *See* ***State v. Ziebart***, 2003 WI App 258, ¶14, 268 Wis. 2d 468, 673 N.W.2d 369 (attorney is not ineffective for failing to challenge a correct ruling).

Next, we consider appellate counsel's assertion that the record does not support a ***Batson*** claim. We agree with appellate counsel's assessment of the record. Further, despite the opportunity to do so, Lindsey has not offered anything to suggest that events outside the record would support a ***Batson*** claim. Accordingly, we conclude that no grounds exist for arguably meritorious appellate proceedings challenging jury selection.[4]

We turn next to the issues that Lindsey raised in his response to the supplemental no-merit report. Appellate counsel elected not to reply to these contentions.

Lindsey complains that trial counsel erred by conducting cross examinations that "merely bolstered witnesses credibility." Our examination of the cross examinations satisfies us that trial counsel took reasonable steps to reveal flaws in the State's case. Although the State contended during closing argument that inconsistencies in a child's narrative "make it more credible," ultimately the jurors—not the lawyers and not this court— assess the effect of cross examination

[4] Although we agree with Attorney Bonneson that nothing in the record reveals a constitutional defect in the jury selection process, we are surprised that he initially dismissed Lindsey's concerns in this regard based solely on the content of the record. This court is bound by the record, *see* ***State v. Migliorino***, 170 Wis. 2d 576, 596 n.11, 489 N.W.2d 678 (Ct. App. 1992), but a convicted person's lawyer has a broad mandate to look for information that may afford the person relief. We are also surprised that, when asked for a supplemental report about the issue, Attorney Bonneson responded: "I have concluded that I will ask Lindsey to explain to me what specific facts he believes show that a juror or jurors were struck by the State because of their status as African American persons." We anticipate that appellate counsel will make inquiries about the appellant's concerns before filing a no-merit report.

Finally, we note our expectation that appellate counsel conducting an appeal pursuant to WIS. STAT. RULE 809.32 will discuss more of the ruling and decisions involved in a multi-day jury trial than counsel examined in the no-merit report filed here. The discussion requirement imposed by RULE 809.32 aids the court and, in fulfilling the discussion obligation, "counsel may discover previously unrecognized aspects of the law in the process of preparing a written explanation for his or her conclusions." *See* ***McCoy v. Court of Appeals***, 486 U.S. 429, 442 (1988).

on witness credibility. *See* ***Kohlhoff v. State***, 85 Wis. 2d 148, 154, 270 N.W.2d 63 (1978). Moreover, cross examination is a matter of trial strategy. *See* ***State v. Hereford***, 224 Wis. 2d 605, 614-15, 592 N.W.2d 247 (Ct. App. 1999). "Matters of reasonably sound strategy, without the benefit of hindsight, are 'virtually unchallengeable.'" ***State v. Banks***, 2010 WI App 107, ¶40, 328 Wis. 2d 766, 790 N.W.2d 526 (citation omitted).

Lindsey also complains that his trial counsel was ineffective for failing to investigate whether to call witnesses. In fact, trial counsel presented the testimony of Robbin Powell, who testified that she lived in Cheryl M.'s home from June through August 2010 and did not see Lindsey engage in any inappropriate behavior with children. Lindsey himself also testified. His complaint that trial counsel did not investigate whether to call witnesses thus has no arguable merit.

Lindsey next complains that trial counsel "failed to investigate the strength of witnesses," and he indicates that trial counsel presented "weaker witnesses" instead of those with "powerful support for the defense." Relatedly, Lindsey asserts that trial counsel failed to "call important fact witnesses" and "fail[ed] to discover and present mitigating evidence." Lindsey has had ample opportunity to identify for this court any witnesses that he believes his trial counsel should have presented. He did not do so. His vague contentions offer no basis to conclude that trial counsel made mistakes that resulted in a loss of available and meaningful defense evidence. *Cf.* ***State v. Leighton***, 2000 WI App 156, ¶38, 237 Wis. 2d 709, 616 N.W.2d 126 (defendant who alleges failure to investigate on the part of counsel must specifically allege what the investigation would have revealed and how it would have altered the outcome of the trial).

Next, Lindsey complains that trial counsel failed to investigate the "lack of physical evidence to support sexual abuse allegations." Nothing available to this court suggests an unplumbed source for investigation in this regard. The State acknowledged it had no physical evidence to support the charges against Lindsey. A nurse, Judy Walczak, testified that all three children had physical examinations at Children's Hospital shortly after disclosing sexual abuse, and Walczak told the jury that the exams were normal and revealed no physical evidence of sexual assault. Walczak also explained, however, that the lack of physical evidence is common when medical examinations follow sexual assault allegations. *Cf.* ***State v. Marinez***, 2011 WI 12, ¶28, 331 Wis. 2d 568, 797 N.W.2d 399 (explaining that absence of physical evidence is a common feature of child sexual assault trials and is a function of the nature of the crime). We are unable to conclude that a potentially meritorious basis exists for challenging trial counsel's effectiveness in regard to the lack of physical evidence.

Next, we consider Lindsey's contention that the circuit court erroneously instructed the jury that the State had the burden of proof. The instruction was correct. Assigning the State the burden of proof is one of the key protections afforded to defendants in our legal system. *See* ***Holland v. State***, 91 Wis. 2d 134, 138, 280 N.W.2d 288 (1979). Further pursuit of this claim would lack arguable merit. *See* ***Ziebart***, 268 Wis. 2d 468, ¶14.

We turn to whether Lindsey could pursue an arguably meritorious challenge to his sentences. Sentencing lies within the circuit court's discretion, and our review is limited to determining if the circuit court erroneously exercised its discretion. ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. "When the exercise of discretion has been demonstrated, we follow a consistent and strong policy against interference with the discretion of

the [circuit] court in passing sentence." ***State v. Stenzel***, 2004 WI App 181, ¶7, 276 Wis. 2d 224, 688 N.W.2d 20.

The circuit court must consider the primary sentencing factors of "the gravity of the offense, the character of the defendant, and the need to protect the public." ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The circuit court may also consider a wide range of other factors concerning the defendant, the offense, and the community. *See* ***id.*** The circuit court has discretion to determine both the factors that it believes are relevant in imposing sentence and the weight to assign to each relevant factor. ***Stenzel***, 276 Wis. 2d 224, ¶16. Additionally, the circuit court must "specify the objectives of the sentence on the record. These objectives include, but are not limited to, the protection of the community, punishment of the defendant, rehabilitation of the defendant, and deterrence to others." ***Gallion***, 270 Wis. 2d 535, ¶40.

The record here reflects an appropriate exercise of sentencing discretion. The circuit court identified protection of the public as the primary sentencing goal and discussed the factors the circuit court deemed relevant to that objective. The circuit court described the offense as serious, although less aggravated than some, and the circuit court stated categorically that "the community needs to be protected." The circuit court then turned to consideration of Lindsey's character and to a variety of other factors that the court viewed as largely mitigating. Acknowledging information in the presentence investigation report (PSI) that Lindsey is the product of an incestuous relationship and spent a substantial portion of his youth in juvenile detention facilities, the circuit court observed:

> I can't imagine how anyone in Mr. Lindsey's ... situation would have anything other than conflicted feelings other than anger. His father was in prison. His father assaulted and/or raped his mother. He barely knew his mother.... He had an awful, terrible, horrible upbringing, and [in] reality there was no upbringing.... It's in my view a mitigating factor. He was not raised. He was not brought up.

The circuit court went on to note that Lindsey "doesn't have anyone here [in court] with him today, which is awful. It's terrible."

The circuit court took into account the indications in the PSI that Lindsey had had significant problems academically.[5] At the same time, however, the circuit court praised Lindsey for making "a very articulate, well-spoken statement" and pointed out that Lindsey "was reading most of it."

The circuit court also found that Cheryl M. contributed substantially to the circumstances that permitted the criminal behavior in this case. The circuit court explained that it did not blame Cheryl M. for Lindsey's crimes, but it noted she was a woman in her forties when she began having sex with Lindsey, "an eighteen-year old who she barely knew." The circuit court emphasized that her lack of judgment "is part of the problem here."

Ultimately, the circuit court found that Lindsey "was dealt a very very poor hand" but determined that he had to address substantial correctional needs for treatment, counselling, and education to overcome his circumstances. Therefore, although the circuit court rejected as too severe the State's recommendation for a global disposition of thirty-to-thirty-four years of

[5] The PSI documents that Lindsey "was identified as mildly mentally retarded" in 2008 while at Ethan Allen School – Juvenile Corrections, but further documents that the diagnoses reflected in his most recent psychiatric notes from 2011 are "mood disorder, not otherwise specified, conduct disorder, [and] developmental delay, not otherwise specified."

imprisonment, the circuit court imposed five consecutive sentences totaling sixteen years of initial confinement and eight years of extended supervision.[6]

The circuit court explained the factors that it considered when imposing sentence. The factors were proper and relevant. Moreover, the penalty imposed was not unduly harsh. A sentence is unduly harsh "'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.'" *See* ***State v. Grindemann***, 2002 WI App 106, ¶31, 255 Wis. 2d 632, 648 N.W.2d 507 (citation omitted). Upon conviction in this case, Lindsey faced the possibility of five consecutive sixty-year sentences. *See* WIS. STAT. §§ 948.02(1)(e) (2009-10), 939.50(3)(b) (2009-10), 973.15(2)(a) (2009-10). The sentences imposed here were well within the statutory maximums allowed by law. Such sentences are presumptively not unduly harsh. *See* ***Grindemann***, 255 Wis. 2d 632, ¶32. Given the nature of Lindsey's crimes, we cannot say that the circuit court's sentencing decision shocks the public sentiment or violates the judgment of reasonable people concerning what is right and proper.

Finally, we have considered whether Lindsey could pursue an arguably meritorious challenge to the order denying his *pro se* postconviction motion for relief from the DNA

[6] For the offenses against JDM, the circuit court imposed, as to one count, four years of initial confinement and two years of extended supervision for one count, and, for the other two counts, two identical sentences of three years of initial confinement and one year of extended supervision. For the offenses against CDM and SEJ, the circuit court imposed two identical sentences of three years of initial confinement and two years of extended supervision.

surcharge imposed at sentencing. The circuit court sentenced Lindsey in October 2011. Pursuant to WIS. STAT. § 973.046(1r) (2011-12), the surcharge was mandatory for the offense in this case.[7] *See* ***State v. Cherry***, 2008 WI App 80, ¶5, 312 Wis. 2d 203, 752 N.W.2d 393. Further proceedings to address this issue would lack arguable merit.

Based on our independent review of the record, no other issues warrant discussion. We conclude that any further 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 summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Paul G. Bonneson is relieved of any further representation of Carlos D. Lindsey on appeal. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals

[7] Effective January 1, 2014, the legislature amended WIS. STAT. § 973.046(1r). *See* 2013 Wis. Act 20, §§ 2354-55, 9426. The amendment first applies to sentences imposed on the effective date. *See* ***id.***, § 9326(1)(g). The amendment is thus not relevant to Lindsey.