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September 30, 2015

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

2015AP87-CRNM State of Wisconsin v. Ladell A. Evans (L.C. # 2012CF757)

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

Ladell A. Evans appeals from a judgment of conviction and an order denying postconviction relief. Evans's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2013-14)[1] and ***Anders v. California***, 386 U.S. 738 (1967). Evans received a copy of the report, was advised of his right to file a response, and has elected not to do so. After

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

reviewing the record and counsel's report, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment and order. RULE 809.21.

In July 2012, the State filed a criminal complaint charging Evans with (1) first-degree sexual assault of a child, (2) exposing genitals to a child, (3) misdemeanor bail jumping, and (4) carrying a concealed weapon. The first two counts stemmed from allegations that Evans had exposed himself to an eleven-year-old girl and later placed his penis in her mouth while she was trying to sleep. The last two counts stemmed from police's subsequent attempt to locate Evans. When they did, he acknowledged having a knife in his front pocket that was seven inches long with a three-inch blade. Evans was out on bond at that time in a misdemeanor case: Kenosha County case No. 12-CM-378. One of the conditions of bond was that he not commit any other crime.

After police located Evans and confiscated his knife, he went to the police station for an interview. Police did not handcuff or place Evans under arrest. Likewise, they did not draw their weapons or use physical force. Evans willingly accompanied them to the station in their squad car. Once at the station, police reminded Evans that he was not under arrest and was free to go anytime. They offered him soda and a bathroom break. In addition, the interview room had a partially open door. Evans subsequently gave a statement in which he admitted knowing the victim and kissing her; however, he denied having any sexual contact with her. The interview lasted approximately one hour and was terminated when Evans requested an attorney.

Eventually, the matter proceeded to trial. Evans waived his right to a jury trial. He also waived his right to testify. During trial, at the request of the parties, the circuit court held a

Miranda-Goodchild[2] hearing concerning Evans's statement to police. The court found that ***Miranda*** was not required because Evans was not in custody and that the statement was voluntary. The court then heard from various state witnesses regarding the allegations against Evans.

At the conclusion of trial, the circuit court found Evans guilty on all four counts. As to the first two counts, the court found the victim's testimony credible. As to the last two counts, the court found that Evans's knife was a dangerous weapon and carrying it concealed constituted a crime and violated a condition of his bond. It subsequently imposed an aggregate sentence of twenty years of imprisonment, consisting of thirteen years of initial confinement and seven years of extended supervision.

Evans filed a postconviction motion seeking an order suppressing the statement he made to police and a new trial. The motion asserted that Evans's statement should have been suppressed because it was the product of an un-***Mirandized*** custodial interrogation. The circuit court disagreed, reiterating its conclusion that ***Miranda*** was not required because Evans was not in custody. Evans appealed. In the process of writing the initial brief, appellate counsel concluded that the argument she had previously believed was meritorious lacked merit. Accordingly, she moved to convert the case to a no-merit appeal. This no-merit report follows.

The no-merit addresses whether the circuit court properly denied Evans's motion to suppress his statement. As noted, the circuit court held two hearings on Evans's motion to

[2] *See* ***Miranda v. Arizona***, 384 U.S. 436 (1966), and ***State ex rel. Goodchild v. Burke***, 27 Wis. 2d 244, 133 N.W.2d 753 (1965).

suppress—one during trial and one after trial. Again, the court found that ***Miranda*** was not required because Evans was not in custody[3] and that the statement was voluntary. Because the record supports both of these determinations, we agree with counsel that any challenge to the circuit court's decision denying Evans's motion to suppress would lack arguable merit.

The no-merit report also addresses whether Evans's right to a jury trial and right to testify were knowingly, voluntarily, and intelligently waived. When a defendant seeks to waive the right to a jury trial, a circuit court must conduct a colloquy with the defendant. ***State v. Anderson***, 2002 WI 7, ¶23, 249 Wis. 2d 586, 638 N.W.2d 301. The same is true when a defendant seeks to waive the right to testify. ***State v. Weed***, 2003 WI 85, ¶40, 263 Wis. 2d 434, 666 N.W.2d 485. Here, the circuit court conducted adequate colloquies with Evans regarding both rights. Accordingly, we agree with counsel that any challenge to the validity of Evans's waivers would lack arguable merit.

The no-merit report also addresses whether the evidence at trial was sufficient to support Evans's convictions. In considering the sufficiency of the evidence, we cannot reverse a criminal conviction "unless the evidence, viewed most favorably to the state and the conviction, 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

[3] A person is in custody for purposes of ***Miranda*** "where a reasonable person would not feel free to terminate the interview and leave the scene." ***State v. Martin***, 2012 WI 96, ¶33, 343 Wis. 2d 278, 816 N.W.2d 270.

evidence to convict Evans of his crimes. We agree with counsel that any challenge to the sufficiency of the evidence would lack arguable merit.[4]

Finally, the no-merit report addresses whether the circuit court properly exercised its discretion at sentencing. 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 (citation omitted). In imposing an aggregate sentence of twenty years of imprisonment, the court considered the seriousness of the offenses, Evans'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, the sentence, which was well within the maximum possible penalty, 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 the circuit court's decision at sentencing 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

[4] To prove count three, misdemeanor bail jumping, the State was required to prove three elements beyond a reasonable doubt: (1) Evans was charged with a misdemeanor; (2) Evans was released from custody on bond; and (3) Evans intentionally failed to comply with the terms of the bond. *See* WIS JI-CRIMINAL 1795. Over the objection of defense counsel, the circuit court took judicial notice that when Evans committed the carrying a concealed weapon offense, he was out on bond in Kenosha County case No. 12-CM-378 and that a condition of bond was that he not commit any other crime. We conclude that this use of judicial notice was proper, as the facts were "capable of accurate and ready determination" by resort to a source "whose accuracy cannot reasonably be questioned." WIS. STAT. § 902.01(2). *See also* ***Teacher Ret. Sys. of Texas v. Badger XVI Ltd. P'ship***, 205 Wis. 2d 532, 540 n.3, 556 N.W.2d 415 (Ct. App. 1996) (court files can be subject to judicial notice). Indeed, the court indicated that the file for case No. 12-CM-378 was "in front" of it. Additionally, Evans did not dispute or question the accuracy of the facts.

be raised on appeal, we accept the no-merit report and relieve Attorney Kaitlin A. Lamb of further representation in this matter.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Kaitlin A. Lamb is relieved of further representation of Evans in this matter.

Diane M. Fremgen
Clerk of Court of Appeals