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DISTRICT II

December 23, 2015

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

2015AP652-CRNM State of Wisconsin v. Donald L. White (L.C. #2013CF348)

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

Donald L. White appeals a judgment convicting him of child enticement as a repeat offender. White's appellate counsel, Attorney Sara H. Roemaat, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2013-14)¹ and *Anders v. California*, 386 U.S. 738 (1967). White was advised of his right to file a response but has not done so. Upon consideration of the no-merit report and an independent review of the record as mandated by *Anders* and RULE

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

809.32, we conclude that the judgment may be summarily affirmed, as there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

The no-merit report addresses whether sufficient credible evidence supported the guilty verdict. The conviction will be sustained “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). The jury decides credibility issues and weighs the evidence. *State v. Gomez*, 179 Wis. 2d 400, 404, 507 N.W.2d 378 (Ct. App. 1993).

The evidence was that thirteen-year-old S.W. knocked on White’s door while selling newspaper subscriptions door-to-door. After a brief exchange, White grabbed her wrist, said, “I want you,” made a “kissy face” at her, and attempted to pull her inside his house. S.W. broke free and immediately told her mother who was in a nearby car. Another student witnessed White’s action. The evidence was sufficient to establish that White, with the intent, or mental purpose, to have sexual contact with thirteen-year-old S.W., attempted to cause her to go into a building. *See* WIS. STAT. § 948.07(1); *see also* WIS JI—CRIMINAL 2134A.

The no-merit report also addresses whether any arguably meritorious issues could support a motion for a new trial. It discusses the pretrial rulings, voir dire, the colloquy by which the trial court confirmed that White’s election to not testify was knowing and voluntary, and the propriety of the opening statements, closing arguments, and jury instructions. Our review of the record confirms counsel’s conclusion that any of these potential issues lack arguable merit. As the no-merit report adequately discusses these potential issues, we need address them no further.

Lastly, the no-merit report considers whether there is any arguable merit to challenge White's fourteen-year sentence, bifurcated as eight years' initial confinement and six years' extended supervision. Sentencing is left to the discretion of the trial court, and appellate review is limited to determining whether that discretion was erroneously exercised. *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. The court fully addressed the primary sentencing factors—the gravity of the offense, the character of the offender, and the need to protect the public. *State v. Spears*, 227 Wis. 2d 495, 507, 596 N.W.2d 375 (1999). It gave the greatest weight to how White's lengthy criminal history and the nature of his crimes played into the need to protect the public. See *Cunningham v. State*, 76 Wis. 2d 277, 282, 251 N.W.2d 65 (1977).

Further, when measured against an exposure of twenty-five years imprisonment and a \$100,000 fine, we cannot say that White's sentence is so excessive or unusual as to shock public sentiment. See *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). The court provided a "rational and explainable basis" for the sentence it imposed, satisfying this court that discretion in fact was exercised. See *Gallion*, 270 Wis. 2d 535, ¶¶39, 76 (citation omitted).

Our independent review of the record discloses no basis for reversing the judgment of conviction. Any further appellate proceedings would be without arguable merit within the meaning of *Anders* and WIS. STAT. RULE 809.32. We therefore accept the no-merit report, affirm the judgment of conviction, and discharge appellate counsel of the obligation to represent White further in this appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Sara H. Roemaat is relieved from further representing White in this matter.

Diane M. Fremgen
Clerk of Court of Appeals