



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT III

June 21, 2016

To:

Hon. Jay N. Conley
Circuit Court Judge
301 Washington
Oconto, WI 54153

Patricia Pawlak
Juvenile Clerk
Oconto County Courthouse
301 Washington
Oconto, WI 54153-0078

Edward D. Burke, Jr.
District Attorney
301 Washington Street
Oconto, WI 54153

Dennis J. Weden
Weden Law Office
12605 W. North Avenue, Ste. 131
Brookfield, WI 53005

T. W.

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

2014AP2952-NM State of Wisconsin v. T. W. (L. C. No. 2013JV37)

Before Hruz, J.¹

Counsel for T. W. has filed a no-merit report concluding no grounds exist to challenge a dispositional order finding him delinquent of first-degree sexual assault of a child under age twelve. T. W. was advised of his right to respond and has not responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

there is no arguable merit to any issue that could be raised on appeal. Therefore, we summarily affirm the order. *See* WIS. STAT RULE 809.21.

A delinquency petition alleged that T. W. sexually assaulted his four-year-old half-sister. The matter was tried and T. W. was found delinquent of first-degree sexual assault of a child under the age of twelve. The circuit court sentenced T. W. to the Wisconsin Department of Corrections Serious Juvenile Offender Program for five years and ordered him to register as a sex offender.

There is no arguable issue as to the sufficiency of the evidence.² It is uncontested the victim was four years old at the time of the alleged incident. The victim's mother testified that, while driving home from the victim's father's house, the victim seemed sad and stated that "[T. W.] touched my private and swunged his pee-pee at me." The mother immediately called the father, who asked her to return to his home as he was going to notify police. An examination was subsequently conducted by a forensic nurse trained as a sexual assault examiner, which revealed a linear abrasion perpendicular to the thigh and a crescent-shaped mark in the vaginal opening. The nurse testified it was her opinion these marks were abnormal for a girl of that age and were caused by something scraping the victim. The victim told the nurse that she was touched inside and outside her underwear.

A recorded forensic interview conducted of the victim was played at trial. The victim stated that "[T. W.]" had "dugged in my privates" with his hand. The victim identified her

“privates” by pointing to the vaginal area on the front side of a body diagram. A forensic scientist with the State Crime Lab testified that DNA from the victim’s jeans was consistent with T. W.’s DNA. There is no issue of arguable merit concerning the sufficiency of the evidence.

The record also discloses no arguable issue as to the circuit court’s discretion concerning the delinquency adjudication. The court properly considered the seriousness of the offense. The court also considered the dispositional report prepared by a social worker with the Oconto County Department of Health and Human Services and found the serious juvenile offender program was the only appropriate placement based on the facts of the case. The court noted T. W. was over the age of fourteen at the time he was adjudicated delinquent and met the criteria for a correctional placement under WIS. STAT. § 938.34(4h). The crime for which he was adjudicated delinquent would be a felony punishable by a sentence of six months or more if committed by an adult. *See* WIS. STAT. § 938.34(4m)(a). The court also found T. W. was “absolutely a danger to the public.” *See* WIS. STAT. § 938.34(4m)(b). The court stated:

[T]he bottom line is pretty simple here that you are absolutely, as you sit here today, you’re full of anger and rage and you’re a danger to the public and you are in need of restrictive custodial treatment I do think this is so bad that both your interests and the protection of the public do require you in a juvenile correctional facility.

The court discussed T. W.’s history of previous dispositions and non-responsiveness to treatment. The court stated:

² A person commits first-degree sexual assault of a child if the person has sexual intercourse with another person under the age of twelve years. WIS. STAT. § 948.02(1)(b). Sexual intercourse means any intrusion by any part of a person’s body into the genital or anal opening of another. WIS. STAT. § 940.225.

He has had all sorts of chances on supervision. He's had a chance on a deferred prosecution agreement. He hasn't taken advantage of any of these chances and he's had opportunities to deal with his behavior, particularly his anger, and he hasn't utilized those opportunities.

The court also adopted the dispositional report's recommendation of sex offender registry, after finding the underlying conduct was sexually motivated and that reporting would be in the best interest of public protection. *See* WIS. STAT. § 938.34(15m). The record demonstrates the court applied relevant law to the facts of record and reached a rational conclusion that was not an erroneous exercise of discretion.

Our independent review of the record discloses no other arguable issues of merit.

Therefore,

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

IT IS FURTHER ORDERED that attorney Dennis Weden is relieved of further representing T. W. in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals