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**DISTRICT II**

September 7, 2016

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

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2015AP1851-CR

State of Wisconsin v. Jacob P. Simon (L.C. #2013CF696)

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

Jacob P. Simon appeals pro se from a judgment of conviction entered after a jury found him guilty of using a computer to facilitate a child sex crime. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2013-14).<sup>1</sup> We affirm.

Simon posted on Craigslist under “Casual Encounters” that he was getting a hotel room for the night and looking for some company. Masquerading as a fifteen-year-old girl named

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

“Kerri,” a City of Waukesha detective responded and made arrangements by e-mail to meet Simon for a sexual encounter. In the e-mails, Simon expressed concern about going to jail for rape. Writing as “Kerri,” the detective indicated it would not be rape if “she” was okay with it, but that Simon had to promise to wear a condom. Simon replied that it would be rape by law but that he would wear a condom.

Simon showed up to meet “Kerri” and was arrested. He provided a statement admitting he had posted the Craigslist ad with his computer and that he had used both his computer and cell phone to correspond with someone he believed to be a fifteen-year-old girl named Kerri. He stated he was only going to have consensual sex with Kerri and would have stopped upon her request. Police located condoms in Simon’s possession. Upon the jury’s verdict, the circuit court imposed an eight-year bifurcated sentence, with five years of initial confinement, the statutorily required minimum, and three years of extended supervision.

On appeal, Simon takes issue with the sentence imposed. He argues that the mandatory minimum was used “as a punitive measure,” asserting that “multiple people involved in the sentencing process felt that the punishment should have been much lower.” This argument is a nonstarter. WISCONSIN STAT. § 939.617 provides mandatory minimum sentences for certain child sex offenses, including Simon’s conviction under WIS. STAT. § 948.075 for use of a computer to facilitate a child sex crime. Section 939.617(1) provides that for a conviction under § 948.075, the “term of confinement in prison portion of the bifurcated sentence shall be at least

5 years.” By statute, the sentencing court was required to impose at least five years of initial confinement.<sup>2</sup>

Next, Simon asserts that though “deception is a valid police tactic, the level shown here exceeds what many would consider reasonable.” Simon does not identify any particular legal theory or argument in support of his contention and he fails to provide any citation to legal authority. *See State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (this court will not address arguments inadequately briefed and which lack citation to proper legal authority). Instead, he provides an appellant’s brief in narrative form along with a 467-page appendix which includes the trial transcripts. Simon’s brief “is so lacking in organization and substance that for us to decide his issues, we would first have to develop them.” *Id.* at 647. We will not do so; this court cannot serve as both advocate and judge. *See id.* We decline to consider this argument further.

Finally, Simon’s reply brief appears to challenge the sufficiency of the evidence supporting the jury’s verdict. On appeal, we will sustain a conviction “unless 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

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<sup>2</sup> For the first time in his reply brief, Simon suggests that the plain language of WIS. STAT. § 939.617 provides the circuit court discretion to impose a sentence less than the mandatory minimum if, under subsec. (2), “the court finds that the best interests of the community will be served and the public will not be harmed and if the court places its reasons on the record.” *See* § 939.617(2). Simon misreads the statute. *See State v. Holcomb*, No. 2015AP996-CR, unpublished slip op. (WI App Aug. 3, 2016) (recommended for publication) (holding that § 939.617(2) authorizes a circuit court to depart from the mandatory minimum and impose either probation or a lesser term of confinement only if the defendant is not more than forty-eight months older than the child-victim).

752 (1990). Simon asserts: “There is no evidence to support the accusation that I intended to have sexual contact with any individual. Every situation brought up by the state is easily explained by a rational explanation.”

First, the evidence at trial, including the contents of Simon’s texts, the condoms in his possession, and his driving to meet “Kerri,” supports an inference that he intended to have sexual relations. See *State v. Schulpius*, 2006 WI App 263, ¶¶12-13, 298 Wis. 2d 155, 726 N.W.2d 706.

If any possibility exists that the trier of fact could have drawn the appropriate inferences from the evidence adduced at trial to find the requisite guilt, an appellate court may not overturn a verdict even if it believes that the trier of fact should not have found guilt based on the evidence before it.

*Poellinger*, 153 Wis. 2d at 507. Second, regardless of Simon’s asserted innocent explanations for his actions, it is the jury’s function to decide the credibility of witnesses and reconcile any inconsistencies in the testimony. *State v. Toy*, 125 Wis. 2d 216, 222, 371 N.W.2d 386 (Ct. App. 1985). Thus, if more than one inference can be drawn from the credible evidence, this court will follow the inference that supports the jury’s finding. *Poellinger*, 153 Wis. 2d at 506-07.

Upon the foregoing reasons,

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

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