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DISTRICT IV

March 20, 2017

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

2016AP1493-CRNM State of Wisconsin v. Michael A. Millard (L.C. # 2014CF60)

Before Kloppenburg, P.J., Higginbotham and Blanchard, JJ.

Attorney Suzanne Edwards, appointed counsel for Michael Millard, has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2015-16)[1] and ***Anders v. California***, 386 U.S. 738, 744 (1967). The no-merit report addresses whether there would be arguable merit to further proceedings based on claims of: (1) ineffective assistance of counsel; (2) procedural error; (3) insufficiency of the evidence to support the jury verdicts; or

[1] All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

(4) sentencing error. Millard was sent a copy of the report, but has not filed a response. Upon independently reviewing the entire record, as well as the no-merit report, we agree with counsel's assessment that there are no arguably meritorious appellate issues. Accordingly, we affirm.

Millard was charged with six counts of child sexual assault. According to the criminal complaint, thirteen-year-old H.N.S. reported that, when Millard was married to H.N.S.'s mother, Millard had repeatedly had vaginal and anal intercourse with H.N.S. when H.N.S. was five to seven years old. Millard moved to dismiss three of the counts as duplicitous and multiplicitous. The court granted the motion, and Millard went to trial on the three remaining counts of repeated sexual assault of a child during three consecutive time periods.

At trial, the State presented testimony by H.N.S.'s mother; a social worker who had interviewed H.N.S. after H.N.S. reported the assaults; H.N.S.; two investigating officers; a doctor who had performed a pediatric sexual abuse examination of H.N.S.; and an expert in psychotherapy for sexual assault victims. The State also played the videotaped forensic interview of H.N.S., with portions redacted at Millard's request. Millard testified in his own defense, denying the allegations. The defense also presented testimony by Millard's parents, as to Millard's interactions with H.N.S. and a lack of evidence that H.N.S. was being sexually abused by Millard at that time.

The jury found Millard guilty of two counts of repeated sexual assault of a child and not guilty of one count of repeated sexual assault of a child. The court sentenced Millard to a total of twenty-five years of initial confinement and fifteen years of extended supervision.

The no-merit report concludes that there would be no arguable merit to a claim of ineffective assistance of counsel. We agree with counsel that the record before us would not support a non-frivolous claim that Millard was denied the effective assistance of trial counsel. *See* ***Strickland v. Washington***, 466 U.S. 668, 687-94 (1984) (claim of ineffective assistance of counsel must show that counsel's performance was deficient and that the deficient performance prejudiced the defense).

Next, the no-merit report addresses whether there would be arguable merit to a claim of procedural error at trial. Specifically, counsel concludes that the circuit court properly ruled on issues raised by counsel; properly answered the two questions asked by the jury during deliberations; and conducted a sufficient colloquy to establish that Millard waived his right to remain silent before testifying. We agree with counsel's assessment that none of these issues would have arguable merit on appeal.

The no-merit report also addresses whether the evidence was sufficient to support the convictions. A claim of insufficiency of the evidence requires a showing that "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 752 (1990). We agree with counsel's assessment that there would be no arguable merit to an argument that that standard has been met here. The evidence set forth by the State, including the forensic interview and testimony of the victim, was sufficient to support the guilty verdicts.

Finally, the no-merit report addresses whether a challenge to Millard's sentence would have arguable merit. Our review of a sentence determination begins "with the presumption that

the trial court acted reasonably, and the defendant must show some unreasonable or unjustifiable basis in the record for the sentence complained of." ***State v. Krueger***, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). Here, the court explained that it considered facts pertinent to the standard sentencing factors and objectives, including Millard's character and criminal history, the seriousness of the offenses, and the need to protect the public. *See* ***State v. Gallion***, 2004 WI 42, ¶¶39-46 & n.11, 270 Wis. 2d 535, 678 N.W.2d 197. The court sentenced Millard to a total of twenty-five years of initial confinement and fifteen years of extended supervision. The sentence was well within the maximum Millard faced and, given the facts of this case, there would be no arguable merit to a claim that the sentence was unduly harsh or excessive. *See* ***State v. Stenzel***, 2004 WI App 181, ¶21, 276 Wis. 2d 224, 688 N.W.2d 20 (a sentence is unduly harsh or excessive "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" (quoting another source)). Additionally, the court granted Millard 226 days of sentence credit, on defense counsel's stipulation. We discern no erroneous exercise of the court's sentencing discretion.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. We conclude that any further appellate 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 affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Suzanne Edwards is relieved of any further representation of Michael Millard in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals