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**DISTRICT I**

May 31, 2017

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

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2017AP240-CRNM State of Wisconsin v. Alexander D. Cambronero
(L.C. # 2015CF3393)

Before Brennan, P.J., Kessler and Dugan, JJ.

Alexander D. Cambronero appeals from a judgment of conviction, entered upon the trial court's verdict, on one count of first-degree sexual assault of a child under age thirteen, contrary to WIS. STAT. § 948.02(1)(e) (2011-12). Appellate counsel, Chris A. Gramstrup, has filed a no-merit report, pursuant to ***Anders v. California***, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2015-16).[1] Cambronero was advised of his right to file a response, but he has not

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

responded. Upon this court's independent review of the record, as mandated by ***Anders***, and counsel's report, we conclude there is no issue of arguable merit that could be pursued on appeal. We therefore summarily affirm the judgment.

## Background

A criminal complaint filed July 31, 2015, charged Cambronero with one count of first-degree sexual assault of a child under age thirteen. The complaint alleged that Cambronero had sexual contact with then-twelve-year-old D.N.C. some time in January 2011, a few days prior to a football game between the Green Bay Packers and the Chicago Bears.[2] D.N.C.'s grandmother reported that D.N.C. had a medical examination on April 15, 2011, where it was determined that D.N.C was nearly five months pregnant. D.N.C. told police that Cambronero was the only person she had ever had sex with.[3]

Just prior to trial, the State filed an amended information that expanded the assault period to include December 2010. This time period was determined by calculating backwards based on the gestational age estimate from April 2011.

Cambronero waived a jury and was tried to the court. D.N.C. testified that she was spending the night at the home of Brenda Maldonado, a family friend who also had children with whom D.N.C. liked to spend time. Cambronero was staying at Maldonado's home, though he was supposed to remain in the basement. D.N.C. went down to the kitchen, looking for

[2] The Green Bay Packers played the Chicago Bears twice in January 2011, once as part of the regular season and once as part of the playoffs.

[3] The delay between the assaults and the charging appears to stem from Cambronero leaving Milwaukee around April 2011 and law enforcement's subsequent inability to locate him.

medication and juice to take for a headache. Cambronero came upstairs and told D.N.C. that he had something for a headache down in the basement. Downstairs, Cambronero started touching D.N.C.'s breast, then "[p]ut [her] on the bed, and he turned the TV on and started having sex with [her.]" D.N.C. described this as penis-to-vagina intercourse. She also testified about an instance of penis-to-anus intercourse and multiple instances of performing oral sex.

D.N.C.'s grandmother testified about her suspicions that D.N.C. might be pregnant and about taking her for an exam. D.N.C.'s grandmother also testified that D.N.C. aborted the fetus, a process that took two days because D.N.C.'s small size meant that she required preparatory treatment to soften her uterus.

Sharon Polakowski, a forensic scientist from the Wisconsin State Crime Laboratory testified. Fetal tissue from the abortion was sent to the lab for examination along with buccal swabs from D.N.C. and Cambronero as references. Polakowski concluded that, knowing D.N.C. was the mother, it was "at least one million times more likely to see the results in the DNA results from the fetal tissue if she and Alexander Cambronero are the parents as opposed to [D.N.C.] and someone unrelated to him being the parents." She also testified that there would have to be at least three mismatches between Cambronero's DNA and the comparison points in the fetal tissue in order to exclude Cambronero, although in this case, there were no mismatches.

Cambronero also testified. He stated that in late 2010 and early 2011, he was doing a lot of drinking, including something called "Four Loko," which he described as an energy drink with alcohol in it. When asked whether he had sexual contact with D.N.C., he answered, "To my knowledge that I can remember, no." When asked whether he had sexual intercourse with her, he answered, "I don't think so." He later elaborated, stating, "Obviously there's DNA. I can't

disprove that. … I couldn't actually tell you if I did or didn't." Near the end of his testimony, Cambronero stated, "I'm saying that if it did happen, it wasn't my choice. It was pretty much her coming downstairs. … It wasn't a voluntary action that I did."

The trial court convicted Cambronero of the charged offense. It imposed a sentence consisting of twenty-five years' initial confinement and fifteen years' extended supervision.

**Discussion**

The first issue appellate counsel addresses is whether Cambronero's waiver of a jury trial was proper. *See* WIS. STAT. § 972.02. A jury waiver must be knowing, intelligent, and voluntary. *See* ***State v. Anderson***, 2002 WI 7, ¶¶24-25, 249 Wis. 2d 586, 638 N.W.2d 301. Having reviewed the record, we agree with counsel's assessment that, in addition to securing a written confirmation of waiver, the trial court conducted a proper and sufficient waiver colloquy. *See* ***id.*** There is no arguable merit to a challenge to the waiver of the jury trial.

Counsel next discusses whether sufficient evidence supports the trial court's guilty verdict. We view the evidence in the light most favorable to the verdict. *See* ***State v. Poellinger***, 153 Wis. 2d 493, 504, 451 N.W.2d 752 (1990). The verdict will be overturned only if, viewing the evidence most favorably to the conviction, that evidence is inherently or patently incredible, or so lacking in probative value that no fact-finder could have found guilt beyond a reasonable doubt. *See* ***State v. Alles***, 106 Wis. 2d 368, 376-77, 316 N.W.2d 378 (1982).

"Whoever has sexual contact with a person who has not attained the age of 13 years is guilty of a Class B felony." WIS. STAT. § 948.02(1)(e) (2011-12). Sexual contact means "[i]ntentional touching by the defendant … by the use of any body part or object, of the

complainant's intimate parts[,]" "whether direct or through clothing, if that intentional touching is either for the purpose of sexually degrading or sexually humiliating the complainant or sexually arousing or gratifying the defendant[.]" WIS. STAT. § 948.01(5)(a)1. (2011-12).

The State introduced a certified copy of D.N.C.'s birth certificate to prove her age, D.N.C. testified about her date of birth, and Cambronero stipulated to the date. D.N.C. testified about Cambronero's multiple instances of sexual contact with her. The trial court found D.N.C. to be credible, noting she had identified Cambronero as her assailant without confusion. Cambronero's credibility, on the other hand, was questionable, with the trial court noting he was always "hedging and qualifying" his answers. While Cambronero had tried to argue the DNA evidence was not that certain when compared to other types of DNA matching, the trial court concluded that the DNA evidence corroborated D.N.C.'s testimony. Mindful of the gratification element to a sexual contact offense, the trial court focused on the contact that resulted in pregnancy as the predicate offense and concluded that the fact of intercourse showed purposes of both sexual arousal and sexual gratification. We are satisfied that sufficient evidence supports the trial court's verdict, and that there is no arguably meritorious challenge to the contrary.

The next issue counsel discusses is whether the trial court properly exercised its sentencing discretion. *See* ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. At sentencing, a court must consider the principal objectives of sentencing, including the protection of the community, the punishment and rehabilitation of the defendant, and deterrence to others, ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76, and determine which objective or objectives are of greatest importance, *see* ***Gallion***, 270 Wis. 2d 535, ¶41. In seeking to fulfill the sentencing objectives, the court should consider a variety of factors, including the gravity of the offense, the character of the offender, and the protection of

the public, and may consider several subfactors. *See* ***State v. Odom***, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695. The weight to be given to each factor is committed to the trial court's discretion. *See* ***id.***

The trial court determined that punishment and protection of the community were the primary objectives, as there would not be much deterrence to others given the facts of this case. The trial court commented that Cambronero refused to follow rules: he had seventeen prior convictions and, while none were felonies, his probation had been revoked five times, and it was evident that probation, jail, and fines did not have any effect on Cambronero. The trial court determined Cambronero's offense to be "overwhelmingly aggravated": not only had D.N.C. testified about three types of assaults over multiple instances, she also testified that, when Cambronero suspected she was pregnant, he punched her in the stomach.

Our review of the record confirms that the court appropriately considered relevant sentencing objectives and factors. The forty-year sentence imposed is well within the sixty-year range authorized by law, *see* ***State v. Scaccio***, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449, and is not so excessive so as to shock the public's sentiment. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

The trial court additionally imposed $6,000 in restitution. *See* WIS. STAT. § 973.20(1r). This was less than the requested $11,050 sought to primarily cover the expenses of the abortion. The trial court considered appropriate factors and determined that Cambronero had the future potential to pay fifty dollars a month for a period of ten years. *See* WIS. STAT. § 973.20(13)(a); ***State v. Ramel***, 2007 WI App 271, ¶15, 306 Wis. 2d 654, 743 N.W.2d 502.

The trial court also imposed a $250 DNA surcharge. It appears this was imposed as a mandatory surcharge under WIS. STAT. § 973.046(1r)(a), following a revision that became effective on January 1, 2014. We note, however, that at the time Cambronero committed his offense in 2010 or 2011, a $250 DNA surcharge was mandatory anyway, given the nature of the crime. *See* WIS. STAT. § 973.046(1r) (2011-12) ("If a court imposes a sentence … for a violation of … [WIS. STAT. §] 948.02 (1) … the court shall impose a deoxyribonucleic acid analysis surcharge of $250.").

There would be no arguable merit to a challenge to the court's sentencing discretion.

The final issue counsel addresses is whether there is any arguable merit to a claim of ineffective assistance of trial counsel. We agree with appellate counsel's assessment that the record before this court does not support any such claim.

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

Upon the foregoing, therefore,

IT IS ORDERED that the judgment is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Chris A. Gramstrup is relieved of further representation of Cambronero in this matter. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published and may not be cited except as provided under WIS. STAT. RULE 809.23(3).

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