



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 I

August 29, 2018

To:

Hon. Jeffrey A. Wagner
Circuit Court Judge
Milwaukee County Courthouse
901 N. 9th St.
Milwaukee, WI 53233

Hon. Jonathan D. Watts
Circuit Court Judge
Br. 15
821 W. State St.
Milwaukee, WI 53233

John Barrett
Clerk of Circuit Court
Room 114
821 W. State Street
Milwaukee, WI 53233

Russell D. Bohach
P.O. Box 485
Butler, WI 53007

Karen A. Loebel
Asst. District Attorney
821 W. State St.
Milwaukee, WI 53233

Criminal Appeals Unit
Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

Scotty Joe Peterson 270497
Oshkosh Corr. Inst.
P.O. Box 3310
Oshkosh, WI 54903-3310

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

2016AP1851-CRNM State of Wisconsin v. Scotty Joe Peterson (L.C. # 2013CF2462)

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

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Scotty Joe Peterson appeals a judgment convicting him after a jury trial of child enticement (sexual contact), second-degree sexual assault of a child, and repeated sexual assault of the same child. He also appeals an order partially denying his motion for postconviction relief. Attorney Russell D. Bohach, who was appointed to represent Peterson, 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). Peterson has responded to the no-merit report. After considering the no-merit report and the response, and after conducting an independent review of the record, we conclude that there are no issues of arguable merit that Peterson could raise on appeal.

The no-merit report first addresses whether the circuit court properly allowed the State to introduce “other acts” evidence during the State’s case-in-chief. *See* WIS. STAT. § 904.04(2). The State sought to introduce the testimony of B.P., the victim, that Peterson sexually assaulted her in a different location about eight months prior to the charged assaults. Our review of the motion hearing transcript shows that the circuit court properly followed the three-step framework outlined in *State v. Sullivan*, 216 Wis. 2d 768, 772-73, 576 N.W.2d 30 (1998), when it decided whether to allow the other acts evidence. The circuit court concluded that the evidence was being offered for a permissible purpose—to show Peterson’s plan and intent. The court also concluded that the proposed testimony from B.P. about the prior assaults was probative and that the probative value of the evidence was not substantially outweighed by unfair prejudice. Because the circuit court properly exercised its discretion in allowing B.P. to testify at trial about the prior assaults, there would be no arguable merit to a challenge to this ruling on appeal.

The no-merit report addresses whether there would be arguable merit to a claim that the evidence was insufficient to support the verdict. When reviewing the sufficiency of the evidence, we look at whether “the evidence, viewed most favorably to the state and the

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

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. Zimmerman*, 2003 WI App 196, ¶24, 266 Wis. 2d 1003, 669 N.W.2d 762 (citation omitted). “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 [the] verdict.” *Id.* (citation omitted).

The testimony and other evidence adduced at trial are summarized in the no-merit report. Based on our thorough review of the trial transcripts and viewing the evidence in the light most favorable to the jury’s verdict, we conclude there was sufficient evidence to convict Peterson.

The no-merit report next addresses whether there would be arguable merit to a claim that the circuit court misused its discretion when it sentenced Peterson to an aggregate term of seventeen years of initial confinement and twelve years of extended supervision. The circuit court considered the general objective of sentencing, identified the factors applicable to this case, and explained its application of the various sentencing factors in accordance with the framework set forth in *State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. Therefore, there would be no arguable merit to an appellate challenge to the sentence.

In his response, Peterson argues that his trial counsel, Douglas Batt, did not provide him with adequate assistance. Peterson contends that Attorney Batt was unprepared for trial and did not question witnesses. We have reviewed the trial transcripts and find no support for these assertions. Attorney Batt advocated for Peterson throughout the proceedings, thoroughly cross-examined the State’s witnesses, and had firm command of the facts and law. There would be no arguable merit to a claim that Peterson received ineffective assistance of trial counsel.

Peterson also argues in his response that there was not sufficient evidence to establish his guilt because there was no physical evidence showing that B.P. had been assaulted. Physical evidence of assault is not necessary to show beyond a reasonable doubt that an assault occurred. B.P.'s testimony provided a sufficient basis for Peterson's conviction. There would be no arguable merit to this claim.

Peterson next argues in his response that he has "new evidence" that should have been presented at trial—nine years earlier, when B.P. was six-years-old, she said that her biological father assaulted her. This information is not "new evidence." To the contrary, Peterson's counsel filed a motion to introduce evidence of alleged prior untruthful allegations of sexual assault by B.P. During the hearing on the motion, the circuit court explained that the fact that a prosecution was not undertaken did not establish that the allegations were untruthful. The court also properly ruled that Peterson had not shown a sufficient factual basis for his motion. There would be no arguable merit to a claim that Peterson should be given a new trial because he was not allowed to introduce evidence about allegations B.P. made when she was six years old.

Our independent review of the record reveals no arguable basis for reversing the judgment of conviction or the order partially denying postconviction relief. Therefore, we affirm the judgment and order, and relieve appellate counsel of further representation of Peterson.

IT IS ORDERED that the judgment and order of the circuit court are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Russell D. Bohach is relieved of any further representation of Peterson in this matter. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals