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DISTRICT II

September 12, 2018

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

2017AP1342-CRNM	State of Wisconsin v. Jason L. Reed (L.C. # 2014CF900)
2017AP1343-CRNM	State of Wisconsin v. Jason L. Reed (L.C. # 2015CF956)
2017AP1344-CRNM	State of Wisconsin v. Jason L. Reed (L.C. # 2015CF1212)

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

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).

Jason L. Reed appeals from judgments of conviction entered on his guilty pleas to child enticement and three counts of second-degree sexual assault with use of force. Attorney Mark A. Schoenfeldt has filed a no-merit report pursuant to WIS. STAT. RULE 809.32

(2015-16)[1] and ***Anders v. California***, 386 U.S. 738 (1967). Reed filed a response to the no-merit report, and counsel then filed a supplemental no-merit report. RULE 809.32(1)(e), (f). Upon consideration of these submissions and an independent review of the records, the judgments are summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

Upon the report of four different women, Reed was charged in 2014 with five counts of second-degree sexual assault with use of force and one count of false imprisonment. In October 2015, Reed was charged with four counts of child enticement, four counts of exposing genitals to a child, and four counts of sexual intercourse with a child after a young woman revealed that in June and July 2014, when she was seventeen years old, she had sexual intercourse with Reed on at least four occasions. As DNA testing was completed in anticipation of trial on the first criminal complaint, Reed's DNA was a match in three other prior reported sexual assaults. In December 2015, Reed was charged with three counts of second-degree sexual assault with use of force against three different women. The cases were joined for a jury trial scheduled for May 9, 2016.

A few days before trial, Reed entered guilty pleas to four counts. The plea agreement resulted in the dismissal as read-ins of nine counts and the outright dismissal of nine counts. The prosecution agreed to recommend a sentence of thirteen years' initial confinement and to leave the amount of extended supervision for the court to determine. Reed was sentenced to

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

consecutive terms totaling eighteen years' initial confinement and fifteen years' extended supervision.[2]

The no-merit report addresses the potential issues of whether Reed's plea was knowingly, voluntarily, and intelligently entered, whether there was a sufficient factual basis for the convictions, whether the sentences were the result of an erroneous exercise of discretion, and whether Reed was denied the effective assistance of trial counsel. This court is satisfied that the no-merit report properly analyzes the issues it raises as without merit, and this court will not discuss them further. Additionally, the sentence for each conviction is well within the maximum and cannot be considered excessive. *See* ***State v. Daniels***, 117 Wis. 2d 9, 22, 343 N.W.2d 411 (Ct. App. 1983) ("A sentence well within the limits of the maximum sentence is not so disproportionate to the offense committed as to shock the public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances.").

In his response, Reed expresses his belief that the child enticement victim embellished her story, that only he said-she said cases existed, that there were conflicting statements in the discovery materials, and that medical records showed no physical marks or bruises suggesting force. He explains that as to half of the charges, he voluntarily went to police during the original

[2] The judgments of conviction include DNA surcharges totaling $1000, and that potential financial obligation was not addressed during the plea colloquy. These appeals were placed on hold awaiting the Wisconsin Supreme Court's decision in ***State v. Odom***, No. 2015AP2525-CR, which was expected to address whether a defendant could withdraw a plea because the defendant was not advised at the time of his plea that multiple mandatory DNA surcharges would be assessed. The ***Odom*** appeal was voluntarily dismissed before oral argument in the supreme court. These cases were then held for a decision in ***State v. Freiboth***, 2018 WI App 46, ___ Wis. 2d ___, ___ N.W.2d ___ (2015AP2535). ***Freiboth*** holds that a plea hearing court does not have a duty to inform the defendant about the mandatory DNA surcharge because the surcharge is not punishment and is not a direct consequence of the plea. ***Id.***, ¶12. Based on ***Freiboth***, there is no arguable merit to a claim for plea withdrawal based on the assessment of mandatory DNA surcharges.

investigation and he was released. He thinks it is unfair that one complaint resulted in a slew of charges "which made me look very guilty by grouping all charges together." He writes, "[i]f only my discovery was looked at, and I mean every page. I truly feel that there would have been a different outcome to the 33 yrs I was given." He points out that some victims originally refused to press charges, and the prosecution could not locate "half the people who placed these complaints." He indicates that he wanted to go to trial but was discouraged by his attorney to do so and was "talked into a plea." He feels his trial counsel gave him wrong advice when she told him he would have a better chance going through any appeal than going to trial.

The supplemental no-merit report correctly explains that nothing in the records suggests that Reed's plea was anything other than knowingly, voluntarily, and intelligently made. Reed acknowledged during the plea colloquy that he was not forced or coerced into entering his guilty plea. Further, because the plea agreement resulted in the dismissal of eighteen counts, trial counsel could not be deemed ineffective for recommending that Reed enter into the plea agreement. By his plea, Reed waived the right to test the evidence at trial. As the supplemental no-merit report points out, the lack of DNA or physical evidence would not have precluded a jury from finding Reed guilty based on victim testimony alone. There was nothing improper or unfair about reviving victim complaints that had not previously resulted in charges when originally investigated.

Reed suggests that it was unfair of the sentencing court to give him more than the thirteen years agreed upon based on the court's opinion that Reed showed no remorse and would not admit to the charges. Reed asserts, "I could not do that if I did not commit the crime." Reed was advised and acknowledged during the plea colloquy that the court was not bound by the agreed

upon sentencing recommendation. The sentencing court's consideration of Reed's lack of remorse is but one factor taken into account. It is not an erroneous exercise to consider a defendant's failure to admit guilt or lack of remorse when it is just one of several factors in the sentencing decision. ***State v. Baldwin***, 101 Wis. 2d 441, 459, 304 N.W.2d 742 (1981).

Finally, Reed complains that appointed counsel "says he talked to me about his [no-merit] decision but we never talked in person, on [the] phone nor did he return my letter with a response." This court does not micromanage the methods by which appointed counsel carries out the duty of representation in order to make the certification required by WIS. STAT. RULE 809.32(1)(c). It is sufficient that this court has fulfilled its obligation to make an independent review of the record and has given Reed the benefit of a skilled and experienced appellate court in determining that there are no issues of arguable merit on these records. *See* ***State v. Tillman***, 2005 WI App 71, ¶18, 281 Wis. 2d 157, 696 N.W.2d 574. A no-merit appeal tests whether appointed counsel has conscientiously determined there are no issues for appeal. ***Id.***, ¶16. This court's acceptance of the no-merit report and discharge of appointed counsel rests on the conclusion that counsel provided the level of representation constitutionally required.

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the convictions, and discharges appellate counsel of the obligation to represent Reed further in these appeals.

Upon the foregoing reasons,

IT IS ORDERED that the judgments of conviction are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Mark A. Schoenfeldt is relieved from further representing Jason L. Reed in these appeals. *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