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DISTRICT II

September 12, 2018

To:

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

2017AP1034-NM

In the interest of M.J.G., a person under the age of 17: State of Wisconsin v. M.J.G. (L.C. # 2016JV142)

Before Hagedorn, J.¹

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).

M.J.G. appeals from a dispositional order adjudicating him delinquent for one count of first-degree sexual assault of a child. M.J.G.'s appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32, and *Anders v. California*, 386 U.S. 738 (1967). M.J.G. received a copy of the report, was advised of his right to file a response, and has elected not to do

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

so. Upon consideration of the report and an independent review of the record, we conclude that the dispositional order may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. WIS. STAT. RULE 809.21.

The State filed a delinquency petition against M.J.G., then fifteen years old, alleging first-degree sexual assault of a child under the age of thirteen by sexual intercourse (count one), child enticement (count two), and disorderly conduct by use of a dangerous weapon (count three). At the same time, the State filed a petition seeking to waive M.J.G. into adult court. Following a contested hearing, the juvenile court denied the waiver petition and, on M.J.G.'s motion, dismissed count two. The parties filed a number of pretrial motions and the court ruled on various contested evidentiary matters. Following a two-day fact-finding hearing, the court dismissed count three but adjudicated M.J.G. delinquent of count one. At disposition, the court ordered but stayed placement in the serious juvenile offender program (SJOP). As recommended by the Racine County Human Services Department and M.J.G., the court ordered one year of supervision and out-of-home placement at the Norris Adolescent Treatment Center.

The no-merit report first addresses whether the juvenile court complied with applicable statutory time limits. We are satisfied that the no-merit report properly analyzes any potential issue premised on this ground as without arguable merit and we will not discuss it further.

Next, the no-merit report addresses whether the circuit court properly exercised its discretion in allowing the victim's videotaped statement to be played in lieu of the victim's direct testimony. We agree with counsel's analysis of this potential issue as without arguable merit, but deem the no-merit report's discussion of the victim's videotaped statement and trial testimony incomplete. The juvenile objected to the admissibility of the victim's videotaped

statement and not to the order of its presentation. Specifically, the juvenile asserted that the video of the victim, who was not yet four-years old, did not satisfy WIS. STAT. § 908.08(3)(c), which requires that the court find:

That the child's statement was made upon oath or affirmation or, if the child's developmental level is inappropriate for the administration of an oath or affirmation in the usual form, upon the child's understanding that false statements are punishable and of the importance of telling the truth.

The juvenile argued that the video did not demonstrate the victim's understanding that false statements are punishable or the importance of telling the truth, *see* § 908.08(3)(c), and that the time and content of the statements did not provide sufficient indicia of trustworthiness, *see* § 908.08(3)(d).

The juvenile court viewed the video and conducted a hearing on its admissibility under WIS. STAT. § 908.08. The forensic interviewer testified about the process and methods for determining whether a very young child knew the difference between a truth and a lie and whether false statements are punishable. The court acknowledged that the video was a mixed bag but found that it showed the child's necessary understanding. In ruling that the video was admissible, the juvenile court also considered that this was a trial to the court, not a jury, and that the child could be cross-examined about his ability to differentiate the truth from a lie. The court's findings of fact were not clearly erroneous and its decision was reasonable and explained.

On this record, we conclude that any challenge to the admission of the videotaped statement lacks arguable merit.²

The no-merit report addresses whether the evidence was sufficient to support M.J.G.'s adjudication. We must affirm the verdict unless the evidence, viewed most favorably to the State and the adjudication, is so insufficient in probative value and force that no reasonable trier of fact could have found guilt beyond a reasonable doubt. *See State v. Poellinger*, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). Credibility of witnesses is for the trier of fact. *Id.* at 504. The no-merit report sets forth the evidence supporting the verdict and we will not repeat it here. Although there was conflicting testimony, it is the function of the fact finder to resolve conflicts in the testimony and weigh the evidence, and if more than one reasonable inference can be drawn from the evidence, we must accept the one drawn by the trier of fact. *Id.* at 506-07. On the evidence presented, the juvenile court acting reasonably could have found M.J.G. guilty beyond a reasonable doubt. There is no arguable merit to a challenge to the sufficiency of the evidence.

The last issue addressed in counsel's no-merit report is whether the juvenile court erroneously exercised its discretion at disposition. *See State v. Richard J.D.*, 2006 WI App 242, ¶5, 297 Wis. 2d 20, 724 N.W.2d 665. In determining disposition, "the court is to consider the seriousness of the offense, the need to protect citizens from juvenile crime, the need to prevent further delinquent acts, and the juvenile's needs for care and treatment." *Id.*, ¶13; *see* WIS. STAT. §§ 938.355(1), 938.01(2) and 938.34. Here, the juvenile court considered factors including

² The State requested and the juvenile objected to having the victim testify in a separate room. The parties reached an agreement wherein the victim would testify in the courtroom and would be visible to the attorneys and judge, but would be separated from the juvenile by a screen. This agreed-upon procedure does not give rise to a meritorious challenge.

M.J.G.’s “very serious conduct,” his prior adjudication for similar behavior, his history of and progress in treatment, his family structure, and his special treatment and educational needs. The court acknowledged that the State’s recommendation for SJOP was reasonable but determined that the focused treatment at Norris would better meet the needs of M.J.G. and the community. In recognition of M.J.G.’s prior offense and treatment history, the court ordered but stayed the SJOP, stating “we’re running out of options here.” The juvenile court considered the proper facts and law and reached a rational, explainable decision. *See Richard J.D.*, 297 Wis. 2d 20, ¶¶12-14. No issue of arguable merit rises from the court’s dispositional order.

As part of our independent review, we will address other potential issues in order to demonstrate that the no-merit procedure has been followed. *State v. Allen*, 2010 WI 89, ¶82, 328 Wis. 2d 1, 786 N.W.2d 124 (difficult to know the nature and extent of the court of appeals’ examination of the record when the court does not enumerate possible issues that it reviewed and rejected in its no-merit opinion).

The State filed pretrial motions to admit evidence of M.J.G.’s other acts under WIS. STAT. § 904.04(2)(a) and to admit his prior adjudication for first-degree sexual assault of a child as character evidence under § 904.04(2)(b). Trial counsel objected and, after hearing argument, the court determined that the State could permissibly re-raise these issues at trial. Ultimately, the court declined to admit the State’s proffered evidence at trial. No arguable merit arises from the court’s rulings concerning M.J.G.’s other acts or prior adjudications.

The juvenile court held a *Miranda-Goodchild*³ hearing to determine the admissibility of M.J.G.'s statements to law enforcement. The questioning officer testified and portions of the interview were played for the court. It was undisputed that M.J.G. was in custody and that the officer properly read and explained his *Miranda* rights; trial counsel argued that because M.J.G.'s face did not appear on the video, the State failed to show that he waived his *Miranda* rights. The juvenile court found that M.J.G. agreed to waive his *Miranda* rights. The court's factual findings involve credibility determinations and are not clearly erroneous. Further, on this record, there is no meritorious challenge to the juvenile court's conclusion that given the totality of the circumstances, M.J.G.'s statements were voluntary. See *State v. Hoppe*, 2003 WI 43, ¶¶34-35, 38, 261 Wis. 2d 294, 661 N.W.2d 407.

Finally, we conclude that no potentially meritorious issues arise from the court's evidentiary rulings at trial or from M.J.G.'s waiver of the right to testify. The court made its evidentiary rulings based on the facts of record and applicable law, see *Sullivan v. Waukesha Cty.*, 218 Wis. 2d 458, 470, 578 N.W.2d 596 (1998), and engaged M.J.G. in an extensive on-the-record colloquy concerning his decision not to testify, see *State v. Weed*, 2003 WI 85, ¶43, 263 Wis. 2d 434, 666 N.W.2d 485.

³ A circuit court holds a *Miranda-Goodchild* hearing to determine whether a suspect's rights under *Miranda v. Arizona*, 384 U.S. 436 (1966), were honored and also whether any statement the suspect made to the police was voluntary. See *State ex rel. Goodchild v. Burke*, 27 Wis. 2d 244, 133 N.W.2d 753 (1965).

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the adjudication and discharges appellate counsel of the obligation to represent M.J.G. further in this appeal. Therefore,

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

IT IS FURTHER ORDERED that Attorney Gregory Bates is relieved from further representing M.J.G. 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