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DISTRICT II

October 17, 2018

To:

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

2017AP2379-CRNM State of Wisconsin v. Freddie D. Barnes (L.C. #2013CF1078)

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).

Freddie D. Barnes appeals from a judgment convicting him of second-degree sexual assault of a mentally deficient individual. Barnes' appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2015-16)[1] and ***Anders v. California***, 386 U.S. 738 (1967).

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

Barnes received a copy of the report, was advised of his right to file a response, and has elected not to do so. After reviewing the record and counsel's report, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment. *See* WIS. STAT. RULE 809.21.

Barnes was convicted following a jury trial of second-degree sexual assault of a mentally deficient individual. The charge stemmed from allegations that he had sexual contact with his girlfriend's adult daughter, who suffered from a mental deficiency and functioned like a small child. The circuit court imposed a sentence of six years of initial confinement and six years of extended supervision. This no-merit appeal follows.

The no-merit report addresses whether the circuit court properly admitted Barnes' statement to police at trial. The court held a ***Miranda*/*Goodchild***[2] hearing on the matter and found that Barnes had properly waived his ***Miranda*** rights and given a voluntary statement to police. Because the record supports these determinations, we agree with counsel that any challenge to the court's decision to admit Barnes' statement would lack arguable merit.

The no-merit report also addresses whether the evidence at Barnes' jury trial was sufficient to support his conviction. When reviewing the sufficiency of the evidence, we may not substitute our judgment for that of the jury "unless the evidence, viewed most favorably to the state and the 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. Poellinger***, 153 Wis. 2d

[2] *See* ***Miranda v. Arizona***, 384 U.S. 436 (1966); ***State ex rel. Goodchild v. Burke***, 27 Wis. 2d 244, 133 N.W.2d 753 (1965).

493, 507, 451 N.W.2d 752 (1990). Our review of the trial transcripts persuades us that the State produced ample evidence to convict Barnes of his crime. That evidence included testimony from eyewitnesses who observed Barnes with his pants down near the victim, who was half naked. It also included DNA found in the victim's vagina that was consistent with Barnes' genetic profile. We agree with counsel that any challenge to the sufficiency of the evidence would lack arguable merit.

Finally, the no-merit report addresses whether the circuit court properly exercised its discretion at sentencing. The record reveals that the court's sentencing decision had a "rational and explainable basis." ***State v. Gallion***, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (citation omitted). In fashioning its sentence, the court considered the seriousness of the offense, Barnes' character, and the need to protect the public. ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Under the circumstances of the case, which were aggravated by Barnes' parental-like relationship with the victim, the sentence imposed does not "shock public sentiment and violate the judgment of reasonable people concerning what is right and proper." ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).[3] We agree with counsel that a challenge to Barnes' sentence would lack arguable merit.

In addition to the foregoing issues, we considered other potential issues that arise in cases tried to a jury, e.g., jury selection, objections during trial, use of proper jury instructions, and propriety of opening statements and closing arguments. Here, the jury was selected in a lawful

[3] Barnes' ability to challenge his sentence is also limited by the fact that his counsel requested a sentence in the same range. *See* ***State v. Magnuson***, 220 Wis. 2d 468, 471-72, 583 N.W.2d 843 (Ct. App. 1998) (a defendant may not object to a sentence that he or she agreed to).

manner. Objections during trial were properly ruled on. The jury instructions accurately conveyed the applicable law and burden of proof. No improper arguments were made to the jury during opening statements or closing arguments. Accordingly, we conclude that such issues would lack arguable merit.

Our independent review of the record does not disclose any potentially meritorious issue for appeal. Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report and relieve Attorney Paul G. Bonneson of further representation in this matter.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Paul G. Bonneson is relieved of further representation of Barnes in this matter.

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

Sheila T. Reiff
Clerk of Court of Appeals