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DISTRICT II

March 20, 2019

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Dale T. Voegeli
283 East Oak Street, #2
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You are hereby notified that the Court has entered the following opinion and order:

2018AP1727-CRNM State of Wisconsin v. Dale T. Voegeli (L.C. #2016CF1245)

Before Neubauer, C.J., Gundrum and Hagedorn, 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).

Dale T. Voegeli appeals from a judgment convicting him of using a computer to facilitate a child sex crime. Voegeli's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2017-18)¹ and *Anders v. California*, 386 U.S. 738 (1967). Voegeli received a

¹ All references to the Wisconsin Statutes are to the 2017-18 version.

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. WIS. STAT. RULE 809.21.

Voegeli was convicted following a bench trial of using a computer to facilitate a child sex crime. The charge arose out of a sting operation, where Voegeli believed he was having computer conversations with a fifteen-year-old girl with whom he planned to meet for sex. In reality, the girl was a detective with the City of Waukesha Police Department. The circuit court sentenced Voegeli to five years of initial confinement and two years of extended supervision. This no-merit appeal follows.

The no-merit report addresses whether Voegeli's right to a jury trial and right to testify were knowingly, voluntarily, and intelligently waived. When a defendant seeks to waive the right to a jury trial, a circuit court must conduct a colloquy with the defendant. *State v. Anderson*, 2002 WI 7, ¶23, 249 Wis. 2d 586, 638 N.W.2d 301. The same is true when a defendant seeks to waive the right to testify. *State v. Weed*, 2003 WI 85, ¶40, 263 Wis. 2d 434, 666 N.W.2d 485. Here, the circuit court conducted adequate colloquies with Voegeli regarding both rights. Accordingly, we agree with counsel that any challenge to the validity of Voegeli's waivers would lack arguable merit.

The no-merit report also addresses whether the evidence at trial was sufficient to support Voegeli's conviction. In considering the sufficiency of the evidence, we cannot reverse a criminal conviction unless the evidence, viewed most favorably to the State and the conviction, is so lacking in force and probative value that no reasonable trier of fact could have found guilt beyond a reasonable doubt. *State v. Poellinger*, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990).

Our review of the trial transcript persuades us that the State produced ample evidence to convict Voegeli of his crime. We agree with counsel that any challenge to the sufficiency of the evidence would lack arguable merit.

The no-merit report also 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." See *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (citation omitted). Moreover, Voegeli's ability to challenge the period of initial confinement imposed is limited by the facts that (1) his counsel requested it and (2) it is the minimum amount allowed by law. See *State v. Magnuson*, 220 Wis. 2d 468, 471-72, 583 N.W.2d 843 (Ct. App. 1998) (defendants may not attack their sentence on appeal when the circuit court imposes the sentence requested by them); WIS. STAT. § 939.617(1) (making a conviction for using a computer to facilitate a child sex crime subject to a mandatory minimum sentence). We agree with counsel that a challenge to Voegeli's sentence would lack arguable merit.

Finally, the no-merit report addresses whether Voegeli was afforded effective assistance of trial counsel and whether a basis exists for sentence modification. There is nothing in the record to suggest that Voegeli received ineffective assistance or that grounds exist for a motion to modify sentence. Consequently, we are satisfied that the no-merit report properly analyzes these issues as without merit, and we will not discuss them further.

Our independent review of the record does not disclose any potentially meritorious issue for appeal.² 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 Philip J. Brehm of further representation in this matter.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Philip J. Brehm is relieved of further representation of Voegeli in this matter.

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

Sheila T. Reiff
Clerk of Court of Appeals

² Voegeli filed a motion to suppress his custodial statement to police. Following a hearing on the matter, the circuit court denied the motion. We conclude that the court's decision to do so was proper. In any event, the State elected not to use Voegeli's custodial statement at trial.