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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  
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**DISTRICT II**

August 7, 2019

To:

Hon. L. Edward Stengel  
Circuit Court Judge  
Sheboygan County Courthouse  
615 N. 6th St.  
Sheboygan, WI 53081

Joel Urmanski  
District Attorney  
615 N. 6th St.  
Sheboygan, WI 53081

Melody Lorge  
Clerk of Circuit Court  
Sheboygan County Courthouse  
615 N. 6th St.  
Sheboygan, WI 53081

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

Timothy T. O'Connell  
O'Connell Law Office  
403 S. Jefferson St.  
Green Bay, WI 54301

Julio Rojas, #661646  
Oshkosh Correctional Inst.  
P.O. Box 3310  
Oshkosh, WI 54903-3310

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

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2018AP1809-CRNM      State of Wisconsin v. Julio Rojas (L.C. #2016CF529)

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).**

Julio Rojas appeals from a judgment convicting him of second-degree sexual assault. His appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2017-18)<sup>1</sup> and *Anders v. California*, 386 U.S. 738 (1967). Rojas was advised of his right to file a response but

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

has not done so. Upon consideration of the no-merit report and an independent review of the record as mandated by *Anders* and RULE 809.32, we summarily affirm the judgment as there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

While high on heroin, DKH encountered Rojas and his brother at a convenience store and accepted a ride from them, although she did not know them, as she had to get to an appointment and had no car. Rojas was driving. After stopping at a liquor store, the brother got in the back seat with DKH. The three shared the liquor as they drove on. The brother engaged in sexual foreplay with DKH. They stopped again and the brother purchased condoms. Instead of taking her to her destination, Rojas drove to a park where he had sexual intercourse with DKH.

Rojas was charged with second-degree sexual assault, contrary to WIS. STAT. § 940.225(2)(f), which proscribes aided-and-abetted nonconsensual sexual intercourse. DKH testified that she remembered none of the assault because of the drugs and alcohol. DNA implicated Rojas.

Police reports referred to text messages DKH sent and received while she was in Rojas' car, to and from her former boyfriend, Jose, and others. Jose had broken up with her just the night before. Some of the messages referred to in the police reports included statements by DKH that she was afraid she was being kidnapped and would be raped.

The State provided Rojas with photos it took of text messages from Jose's phone, thus showing only texts between Jose and DKH. They were of poor quality, such that they were difficult to read and could not be reproduced. The State apparently could not locate the text messages between DKH and others, but at least, at one point, evidently possessed them in readable form. Rojas argued that the unproduced messages were central to the issue of DKH's

consent, because her claim of fear was really an effort to garner pity from Jose so he would take her back. After a two-day trial, the jury found Rojas guilty. The court sentenced him to five years' initial confinement plus ten years' extended supervision. This no-merit appeal followed.

The no-merit report addresses whether the trial court improperly denied Rojas' pretrial motion to dismiss due to the State's loss of or failure to preserve the text-message evidence; the sufficiency of the evidence at trial; and the propriety of the sentence. Appellate counsel adequately discusses these potential issues. After our review of the record, we are satisfied that no nonfrivolous challenge could be raised. We thus need not address these points further.<sup>2</sup> Our review of the record discloses no other potential issues for appeal. Therefore,

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

IT IS FURTHER ORDERED that Attorney Timothy T. O'Connell is relieved from further representing Rojas in this appeal. *See* WIS. STAT. RULE 809.32(3).

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

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*

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<sup>2</sup> The report does not reflect that counsel reviewed the pretrial motions in limine, jury selection, or the use of the "did not consent" language of WIS JI—CRIMINAL 1220C over Rojas' objection. We remind counsel that a no-merit report carries the obligation to conduct a "conscientious examination" of the record for possible grounds for appeal, *see Anders v. California*, 386 U.S. 738, 744 (1967), and to show why each lacks arguable merit, *see* WIS. STAT. RULE 809.32(1)(a).