



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

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
Web Site: www.wicourts.gov

DISTRICT I

November 5, 2019

To:

Hon. M. Joseph Donald
Circuit Court Judge
821 W. State St., Rm. 506
Milwaukee, WI 53233

Karen A. Loebel
Deputy District Attorney
821 W. State St.
Milwaukee, WI 53233

John Barrett
Clerk of Circuit Court
821 W. State Street, Rm. 114
Milwaukee, WI 53233

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

Bradley J. Lochowicz
Seymour, Kremer, Koch, Lochowicz &
Duquette
P.O. Box 470
Elkhorn, WI 53121-0470

Anthony Kyle 348394
Jackson Correctional Inst.
P.O. Box 233
Black River Falls, WI 54615-0233

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

2018AP2158-CRNM State of Wisconsin v. Anthony Kyle (L.C. # 2016CF4938)

Before Brash, P.J., Kessler and Dugan, 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).

Anthony Kyle appeals a judgment of conviction entered upon his guilty plea to second-degree sexual assault of a person who has not attained the age of sixteen years. *See* WIS. STAT. § 948.02(2) (2015-16).¹ Appellate counsel, Attorney Bradley J. Lochowicz, filed a no-merit

¹ All subsequent references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32. Kyle did not file a response. Based upon our review of the no-merit report and the record, we conclude that no arguably meritorious issues exist for an appeal, and we summarily affirm. *See* WIS. STAT. RULE 809.21.

According to the criminal complaint, C.J. reported to police on June 8, 2016, that her daughter K.K.A., born December 6, 2002, took a home pregnancy test that revealed she was pregnant. K.K.A. told police that sometime late in 2015 she had one act of penis-to-vagina intercourse with Kyle, whom she knows because he lives with her family. DNA testing on fetal tissue recovered following termination of the pregnancy showed that Kyle was “two million more times likely to be the biological father of the product of conception” than a random unrelated male. The State charged Kyle, born February 22, 1962, with one count of second-degree sexual assault of a child.

Kyle filed a motion to suppress the DNA evidence, but on the day of the motion hearing he told the circuit court that he wanted to withdraw the motion and resolve the case. Pursuant to a plea agreement, he pled guilty as charged, and the State agreed to recommend a prison sentence without specifying a recommended term of imprisonment.

At sentencing, Kyle faced maximum penalties of a \$100,000 fine and forty years of imprisonment. *See* WIS. STAT. §§ 948.02(2) (2015-16), 939.50(3)(c) (2015-16). The circuit court imposed a twenty-five-year term of imprisonment bifurcated as fifteen years of initial confinement and ten years of extended supervision. The circuit court awarded Kyle the 239 days of sentence credit he requested and found him ineligible to participate in either the challenge

incarceration program or the Wisconsin substance abuse program. At a subsequent restitution hearing, the circuit court set restitution at zero.

We first consider whether Kyle could pursue an arguably meritorious challenge to the validity of his guilty plea. We conclude that he could not do so. The circuit court conducted a thorough guilty plea colloquy that fully complied with the circuit court's obligations when accepting a plea other than not guilty. *See* WIS. STAT. § 971.08; *State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986); and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. The record—including the plea questionnaire and waiver of rights form and addendum, the attached jury instructions describing the elements of the crime to which Kyle pled guilty, and the plea hearing transcript—demonstrates that Kyle entered his guilty plea knowingly, intelligently, and voluntarily.

We also conclude that Kyle could not pursue an arguably meritorious challenge to the circuit court's exercise of sentencing discretion. *See State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. The circuit court indicated that punishment and rehabilitative treatment were the primary sentencing goals, and the circuit court discussed the sentencing factors that it viewed as relevant to achieving those goals. *See id.*, ¶¶41-43. The sentence that the circuit court selected was well within the maximum sentence allowed by law and cannot be considered unduly harsh or unconscionable. *See State v. Grindemann*, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507.

Finally, Kyle could not pursue an arguably meritorious challenge to the circuit court's finding that he is ineligible to participate in the challenge incarceration program, *see* WIS. STAT. § 302.045, and the Wisconsin substance abuse program, *see* WIS. STAT. § 302.05. A person who

is incarcerated for a crime specified in WIS. STAT. § 948.02, is statutorily disqualified from participation in either program. *See* §§ 302.045(2)(c); 302.05(3)(a)1.

Our independent review of the record does not disclose any other potential issues warranting discussion. We conclude that further postconviction or appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

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

IT IS FURTHER ORDERED that Attorney Bradley J. Lochowicz is relieved of any further representation of Anthony Kyle. *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