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**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  
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**DISTRICT IV**

December 9, 2019

To:

Hon. Robert J. Shannon  
Circuit Court Judge  
1516 Church St.  
Stevens Point, WI 54481

Louis J. Molepske Jr.  
District Attorney  
1516 Church St.  
Stevens Point, WI 54481

Lisa M. Roth  
Clerk of Circuit Court  
Portage Co. Courthouse  
1516 Church Street  
Stevens Point, WI 54481-3598

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

Leonard D. Kachinsky  
Kachinsky Law Offices  
832 Neff Ct.  
Neenah, WI 54956-0310

Antonio Saenz 472137  
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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2018AP48-CRNM      State of Wisconsin v. Antonio Saenz (L.C. # 2016CF129)

Before Fitzpatrick, P.J., Graham and Nashold, 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).**

Attorney Len Kachinsky, appointed counsel for Antonio Saenz, 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). Counsel provided Saenz with a copy of the report, and Saenz responded. We conclude

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

that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. After our independent review of the record, we conclude there is no arguable merit to any issue that could be raised on appeal.

After a jury trial, Saenz was convicted of two counts each of second-degree sexual assault of a child; exposing genitals to a child; exposing a child to harmful descriptions; and contributing to the delinquency of a child. The court imposed concurrent sentences on all counts, with the controlling sentence being seven years of initial confinement and seven years of extended supervision.

The no-merit report addresses whether the evidence was sufficient. We affirm the verdict unless the evidence, viewed most favorably to the State and the conviction, is so insufficient in probative value and force that no reasonable trier of fact could have found guilt beyond a reasonable doubt. *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.

Without attempting to recite the evidence in detail here, we are satisfied that the testimony of the two victims, combined with social media records, was sufficient to support the convictions. The testimony was not inherently incredible and, if believed by the jury, was sufficient to meet all the elements of all the charges. There is no arguable merit to this issue.

The no-merit report addresses two evidentiary rulings. In one ruling the circuit court did not allow the defense to ask a question about something the victims' father said. The court properly exercised its discretion to conclude that this was irrelevant. In the other ruling the court allowed evidence of two other acts by Saenz, but disallowed two additional acts. As described in

the no-merit report, the court applied the proper legal standard and made a proper exercise of discretion. There is no arguable merit to these issues.

The no-merit report addresses whether the circuit court erred by granting the State's motion to amend the information with new charges after the arraignment. Such amendment is allowed under WIS. STAT. § 971.29(2) if not prejudicial to the defendant. The defense did not object to that motion, and the record does not show any basis to argue that the defendant was prejudiced by that amendment. There is no arguable merit to this issue.

The no-merit report addresses whether the court erroneously exercised its sentencing discretion. The standards for the circuit court and this court on sentencing issues are well-established and need not be repeated here. *See State v. Gallion*, 2004 WI 42, ¶¶17-51, 270 Wis. 2d 535, 678 N.W.2d 197. In this case, the court considered appropriate factors, did not consider improper factors, and reached a reasonable result. There is no arguable merit to this issue.

In Saenz's response to the no-merit report, Saenz asserts that he was not represented properly at trial. He does not provide specific examples, other than to assert that he overheard his trial counsel "ask DA that they should go fishing some day and DA just smiled at him." This assertion, even if true, does not support a legal claim that has arguable merit.

Our review of the record discloses no other potential issues for appeal.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Kachinsky is relieved of further representation of Saenz in this matter. *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*