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DISTRICT I

March 3, 2020

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

2018AP1725-CRNM State of Wisconsin v. Jason A. Walters (L.C. # 2016CF4624)

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

Jason A. Walters appeals from a judgment convicting him of first-degree sexual intercourse with a person under the age of sixteen with the use or threat of force; trafficking of a child; child

abuse, intentionally causing harm; and false imprisonment. He also appeals the order denying his postconviction motion.¹ His appellate counsel, Dennis Schertz, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2017-18) and *Anders v. California*, 386 U.S. 738 (1967).² Walters received a copy of the report and filed a response. Upon consideration of the report, Walters' response, and an independent review of the record as mandated by *Anders*, we conclude that the judgment and order may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

The charges against Walters stemmed from incidents that occurred during the fall of 2015 through the spring of 2016. The victim was thirteen years old when the crimes began. When she testified during the jury trial, she was fifteen years old. The jury found Walters guilty of all of the charges, and the trial court imposed the following concurrent sentences: count one, first-degree sexual assault of a child, thirty-two years of initial confinement and fifteen years of extended supervision; count two, trafficking of a child, twenty-five years of initial confinement and ten years of extended supervision; count three, physical abuse of a child, three years of initial confinement and three years of extended supervision; and count four, false imprisonment, three years of initial confinement and three years of extended supervision.

In a postconviction motion, Walters argued that trial counsel was ineffective for failing to call two witnesses at trial: Denzel Dailey, who allegedly would have testified that an individual named Xavier Williams told other inmates that he had set Walters up, which was consistent with

¹ The Honorable Carolina Stark entered the judgment of conviction. The Honorable David Borowski issued the order denying Walters' postconviction motion.

² All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

Walters' testimony at trial; and Dominique Williams, who allegedly also would have corroborated Walters' testimony at trial that he was set up and who would have revealed that she was with the victim during most of the time period when the crimes occurred.

The postconviction court denied the motion without holding a hearing. In its written decision, the postconviction court noted postconviction counsel's averment that Dailey refused to sign a supporting affidavit. The postconviction court explained that even if Dailey had submitted an affidavit, it would have been rejected as hearsay and, therefore, it would not have corroborated Walters' version of events. The postconviction court further concluded that the potential testimony of Dominique Williams, as detailed in the affidavit provided by Walters, would not have exonerated him. The postconviction court held that Walters' motion was insufficient to warrant a *Machner* hearing.³ This appeal follows.

The no-merit report discusses whether Walters received a fair trial and whether there was sufficient evidence for findings of guilt. In discussing the trial, the no-merit report addresses whether the trial court properly denied the following motions by Walters: his motion to present evidence that Xavier Williams was charged with sexually assaulting the victim; his motion for a mistrial; and Walters' motion to strike a juror. The no-merit report also considers whether Walters received the effective assistance of trial counsel; whether the trial court's sentence was excessive; and whether the trial court erred when it denied Walters' postconviction motion for a new trial. This court is satisfied that the no-merit report properly analyzes the issues it raises as being without merit

³ See *State v. Machner*, 92 Wis. 2d 797, 804, 285 N.W.2d 905 (Ct. App. 1979).

and that no procedural trial errors occurred. We discuss these potential issues further only insofar as they relate to arguments raised by Walters in his response.

In his response, Walters raises a number of claims connected to the overarching issues of the sufficiency of the evidence and whether his trial counsel was ineffective. For instance, in his no-merit response, Walters argues that the victim was inconsistent with the version of events she provided to the police and in her testimony at trial, “[r]ight along with lying.” Walters then reiterates the theory of defense at trial, which was that the phone number connecting him to the crimes did not belong to him, and he denies that he committed the underlying crimes. However, the jury, which is the sole judge of credibility, was entitled to accept the State’s evidence supporting the charges against Walters—and it did. *See State v. Burgess*, 2002 WI App 264, ¶23, 258 Wis. 2d 548, 654 N.W.2d 81 (“[T]he jury is sole judge of credibility; it weighs the evidence and resolves any conflicts.”). There would be no arguable merit to challenging the sufficiency of the evidence on appeal.

Walters also argues that trial counsel was ineffective when he called Walters a “dumb-ass” after Walters asked him to object⁴ and for not being more aggressive when he questioned the fifteen-year-old victim. Having reviewed the entire record, we are not persuaded that Walters’ points permit a meritorious claim of ineffective assistance of counsel. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984) (establishing a claim of ineffective assistance of trial counsel requires a

⁴ The trial transcript reflects that outside of the presence of the jury, Walters told the trial court that his attorney called him a dumb ass. The trial court noted that there had been “a heightened level of intensity” in the discussion between Walters and his attorney. However, it explained that there was nothing that the trial court saw or heard that caused it concern such that it needed “to do something else on that. There may have been a moment of heated discussion but it is time to move on[.]”

defendant to show both that counsel's performance was deficient and that counsel's deficient performance prejudiced the defense).

Our review of the record discloses no other potential issues for appeal. This court has reviewed and considered the various issues raised by Walters. To the extent we did not specifically address all of them, this court has concluded that they lack sufficient merit or importance to warrant individual attention. Accordingly, this court accepts the no-merit report, affirms the convictions and the order, and discharges appellate counsel of the obligation to represent Walters further in this appeal.

Upon the foregoing, therefore,

IT IS ORDERED that the judgment and order are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Dennis Schertz is relieved of further representation of Jason A. Walters in this matter. *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