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May 19, 2020

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

2018AP1201-CRNM State of Wisconsin v. Willie Louis Nickols (L.C. # 2015CF3536)

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

Willie Louis Nickols appeals a judgment convicting him of one count of first-degree sexual assault of a child (intercourse with a person under the age of twelve) and one count of first-degree sexual assault of a child (sexual contact with a person under the age of thirteen). Appointed appellate counsel, Marcella DePeters, filed a no-merit report pursuant to *Anders v. California*, 386

U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2017-18).¹ Nickols filed two responses to the no-merit report. After considering the report and the responses, and after conducting an independent review of the record, we conclude that there are no issues of arguable merit that could be pursued on appeal. Therefore, we affirm.

The no-merit report first addresses whether the circuit court erroneously exercised its discretion when it granted the State’s motion to admit other-acts evidence regarding Nickols’s conviction in 2007 for first-degree sexual assault of a child. The victim in that case was, like the victim in this case, a child family member. Evidence of other crimes may be admitted in a criminal trial in certain circumstances. *See* WIS. STAT. § 904.04(2); *State v. Sullivan*, 216 Wis. 2d 768, 782-84, 576 N.W.2d 30 (1998). Here, the circuit court allowed the prior acts evidence to show Nickols’s propensity to commit sexual assaults against children in his extended family. This evidence was allowed by statute. Therefore, we agree with the no-merit report’s analysis of this issue and its conclusion that the circuit court properly exercised its discretion in allowing the evidence to be admitted.

In his response to the no-merit report, Nickols contends that the other acts evidence should have been barred under the doctrine of issue preclusion. “The doctrine of issue preclusion forecloses relitigation of an issue that was litigated in a previous proceeding involving the same parties....” *Masko v. City of Madison*, 2003 WI App 124, ¶4, 265 Wis. 2d 442, 665 N.W.2d 391. Nickols’s argument is unavailing because the doctrine of issue preclusion does not apply here. The State was not attempting to relitigate the prior conviction when it introduced evidence of Nickols’s prior sexual assault. Rather, the State used the prior conviction to show that Nickols

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

had the motive and intent to commit the crimes for which he was currently being tried. There would be no arguable merit to an appellate argument that the circuit court misused its discretion in allowing the other-acts evidence.

The no-merit report next addresses whether there would be arguable merit to a claim that the evidence was insufficient to support the jury's guilty verdicts. We view the evidence in the light most favorable to the verdict, and if more than one inference can be drawn from the evidence, we must accept the one drawn by the trier of fact. *See State v. Poellinger*, 153 Wis. 2d 493, 504, 451 N.W.2d 752 (1990). The verdict will be overturned only if no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt, viewing the evidence most favorably to the conviction. *See State v. Alles*, 106 Wis. 2d 368, 376-77, 316 N.W.2d 378 (1982).

The no-merit report summarizes the testimony of the victim, who testified in detail about being sexually assaulted by Nickols. The no-merit report also summarizes the testimony of Milwaukee Police Officer Tammy Trammel-McClain, who testified that Nickols admitted to sexual contact with the victim when she was interviewing him. These witnesses, and the others who testified at trial, provided ample evidence for the jury to convict Nickols of the charges against him. There would be no arguable merit to a challenge to the sufficiency of the evidence on appeal.

The no-merit report next addresses whether there would be arguable merit to a claim that the circuit court erroneously exercised its discretion when it sentenced Nickols to twenty-five years of initial confinement and twenty years of extended supervision on each count, to be served concurrently. "The principal objectives of a sentence include, but are not limited to, the protection of the community, the punishment of the defendant, rehabilitation of the defendant, and deterrence to others." *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. "A

sentencing court should indicate the general objectives of greatest importance and explain how, under the facts of the particular case, the sentence selected advances those objectives.” *Id.*

The circuit court considered the seriousness of Nickols’s crimes and the adverse impact on the victim, who was very young and vulnerable. The circuit court said that Nickols preyed on the young people in his family in acts that now spanned two generations, and that “any access he has to any extended family members poses a danger.” The circuit court decided that Nickols had little rehabilitative potential because he had not been cooperative with sex offender treatment and continued to offend despite his advancing age. The circuit court concluded that Nickols needed long term incarceration to protect the community and to punish him. The circuit court addressed the objectives of its sentence in light of the circumstances of this case. Because the circuit court applied the facts of this case to the proper legal standards to reach a reasoned and reasonable determination, there would be no arguable merit to a challenge to the sentencing court’s discretion.

In his response, Nickols argues that he received ineffective assistance because his trial counsel did not attempt to offer the testimony of an expert witness to contradict opinions provided by Judy Walczak, the sexual assault nurse examiner who treated and interviewed the victim. In particular, Nickols takes issue with Walczak’s testimony that ninety-five percent of the children that she has examined for sexual abuse do not have any type of injury. There are several problems with Nickols’s arguments. First, Walczak’s testimony addresses *her own experience* working with sexual assault victims. This is not the type of testimony that another person would be able to contradict.

Second, Nickols argues that an expert witness would have undermined Walczak’s testimony because “sexual intercourse would have created lasting physical evidence of intercourse

when in fact there was no such evidence.” However, Nickols suggests no scientific basis for his claim and points to no expert who might testify on his behalf. Therefore, we conclude that there would be no arguable merit to a claim that Nickols received ineffective assistance of trial counsel because his trial counsel did not call an expert witness.

Nickols argues in his response to the no-merit report that his “investigation attorney” could not find all of the medication that was taken from him when he was arrested. It is unclear to this court to whom Nickols is referring. Regardless, Nickols’s complaints about the conditions of his confinement are not within the scope of this appeal from his judgment of conviction. Nickols should bring his complaints to the attention of the jail or prison authorities through the appropriate administrative procedure.

Nickols next argues that he may have tickled the victim, but he cannot see well. Therefore, he may have inadvertently touched the victim in an inappropriate location. This argument does not provide grounds for appeal because the facts of this case have already been decided by the jury. We will not overturn the jury’s decision about the facts of the case.

We have carefully considered all of the points Nickols raises in his two separate responses to the no-merit report but find nothing that provides grounds for an appeal. Moreover, our independent review of the record reveals no other potential issues of arguable merit. Therefore, we affirm the judgment and relieve Attorney Marcella DePeters of further representation of Nickols.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Marcella DePeters is relieved of further representation of Nickols. *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