



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](http://www.wicourts.gov)

**DISTRICT III**

May 27, 2020

To:

Hon. John Zakowski  
Circuit Court Judge  
Brown County Courthouse  
P.O. Box 23600  
Green Bay, WI 54305-3600

John VanderLeest  
Clerk of Circuit Court  
Brown County Courthouse  
P.O. Box 23600  
Green Bay, WI 54305-3600

Erica L. Bauer  
Bauer Law, LLC  
1835 E. Edgewood Dr., Ste. 105 #303  
Appleton, WI 54913

David L. Lasee  
District Attorney  
P.O. Box 23600  
Green Bay, WI 54305-3600

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

Austin Michael Rathbun 640322  
Racine Youthful Offender Corr. Facility  
P.O. Box 2500  
Racine, WI 53404-2500

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

---

2018AP2133-CRNM      State of Wisconsin v. Austin Michael Rathbun  
(L. C. No. 2016CF1721)

Before Stark, P.J., Hruz and Seidl, 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).**

Counsel for Austin Rathbun has filed a no-merit report concluding there is no basis to challenge Rathbun's judgment of conviction for second-degree sexual assault-intoxicated victim, as a party to a crime, and as a repeater. Rathbun was advised of his right to respond and has not responded. Upon our independent review of the record as mandated by *Anders v. California*,

386 U.S. 738 (1967), we conclude there is no merit to any issue that could be raised on appeal, and we summarily affirm. *See* WIS. STAT. RULE 809.21 (2017-18).<sup>1</sup>

Police were dispatched to a residence in Green Bay in response to a report that a female had been raped in a basement by two males. According to the criminal complaint, the sixteen-year-old victim was at Rathbun's residence with other individuals when she blacked out. When she woke up, she was in the basement and her leggings were around her ankles, her bra was above her breasts, she was on her knees, and Rathbun had his penis inside her vagina. The victim further reported that Rathbun continued to have sexual intercourse with her while the other male put his penis in her mouth. While the sexual assault was occurring, the other male choked her at least two times. Rathbun continued to sexually assault the victim while she was being strangled by the other male, not letting her go, and forcing the victim to remain in the same position.

The victim also alleged that while she was being raped, she had another blackout episode, but just before blacking out she remembered Rathbun saying to the other male, "[D]o you want a go at this?" When the victim gained consciousness again, Rathbun was gone, she was lying on her back on the floor, the other male was on top of her with his penis in her vagina, and he was choking her again.

Rathbun's DNA was found on the victim's vaginal, cervical, and external genital swabs. In a recorded jail call, Rathbun was allegedly heard telling his mother that he had sex with the victim, but he had lied to the police about it.

---

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

Rathbun was charged with one count of first-degree sexual assault, and one count of strangulation and suffocation, with both counts as a party to a crime, and as a repeater. An amended complaint added one count of false imprisonment, as a party to a crime, and as a repeater. The State subsequently filed an amended Information, formally amending Count 1 to second-degree sexual assault of a person under the influence of an intoxicant to a degree which rendered that person incapable of rendering consent. This count was also charged as a party to a crime, and as a repeater. Rathbun pleaded guilty to the second-degree sexual assault count with the repeater, and the two remaining counts were dismissed and read in. The circuit court imposed a sentence consisting of ten years' initial confinement and four years' extended supervision.

Rathbun filed a postconviction motion for additional sentence credit for the time he was held on a probation hold due to the allegations underlying this case. The circuit court granted Rathbun's postconviction motion and issued an amended judgment of conviction.

The no-merit report addresses potential issues regarding whether the plea was knowingly, intelligently, and voluntarily entered; whether any issues would justify plea withdrawal; whether the circuit court erroneously exercised its sentencing discretion; whether Rathbun was granted all sentence credit to which he was entitled; and whether the court properly determined Rathbun's eligibility for prison programming. Upon our independent review of the record, we agree with counsel's description, analysis, and conclusion that any challenge to these issues would lack

arguable merit, and we will not further address them. Our independent review of the record discloses no other potential issue for appeal.<sup>2</sup>

Therefore,

IT IS ORDERED that the judgment is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Erica Bauer is relieved of her obligation to further represent Austin Rathbun 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*

---

<sup>2</sup> We note the COMPAS risk assessment was mentioned at sentencing, but the record shows it was not “determinative” of the sentence imposed. *See State v. Loomis*, 2016 WI 68, ¶¶98-99, 371 Wis. 2d 235, 881 N.W.2d 749. Any challenge to the sentence based on COMPAS would therefore lack arguable merit.