



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 24, 2020

To:

Hon. Carolina Stark
Circuit Court Judge
901 N. 9th St.
Milwaukee, WI 53233

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

Angela Conrad Kachelski
The Kachelski Law Firm S.C.
7101 N. Green Bay Ave., Ste. 6A
Milwaukee, WI 53209

Elizabeth A. Longo
Assistant District Attorney
District Attorney's Office
821 W. State. St. - Ste. 405
Milwaukee, WI 53233

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

Willie Carl Vance 160079
Green Bay Correctional Inst.
P.O. Box 19033
Green Bay, WI 54307-9033

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

2020AP585-CRNM	State of Wisconsin v. Willie Carl Vance (L.C. # 2016CF4591)
2020AP586-CRNM	State of Wisconsin v. Willie Carl Vance (L.C # 2017CF1815)

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).

Willie Carl Vance appeals from judgments of conviction for second-degree sexual assault of an unconscious victim and intimidation of a witness. His appellate counsel has filed a no-merit

report pursuant to WIS. STAT. RULE 809.32 (2017-18),¹ and *Anders v. California*, 386 U.S. 738 (1967). Vance received a copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the report and an independent review of the records, as mandated by *Anders*, the judgments are summarily affirmed because we conclude that there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

Vance was arrested and charged with second-degree sexual assault of an unconscious victim based on the report of H.S.H. After a jury had been selected but not yet sworn, it came to light that there were at least fifty-one recorded calls that Vance had made from the jail to H.S.H.'s mother. Vance requested an adjournment of the trial because he wanted the opportunity to review the calls and possibly use them in his defense to the sexual assault charge. The trial was adjourned. Vance was subsequently charged in a separate complaint with intimidation of a witness, and the cases were joined for trial.

A jury trial was held. H.S.H. testified that, while sleeping on the couch at her mother's house, she woke to find Vance rubbing her anus and vagina with his hands. She immediately reported the assault to her mother and called the police. At the time of the assault, Vance was the mother's live-in boyfriend. A police investigator testified that while Vance was in jail, and despite an order that he have no contact with H.S.H. or her family, Vance called H.S.H.'s mother and several times stated that H.S.H. should not show up for the jury trial. Two recorded phone calls from jail were played for the jury. After the jury found Vance guilty of the charges in both cases, he was sentenced to consecutive terms totaling twelve years of initial confinement and ten years

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

of extended supervision. The sentences were also ordered to be served consecutive to a sentence Vance was serving at the time of sentencing.

The no-merit report sets forth appellate counsel's review of the initial appearances, the preliminary hearing in the sexual assault case, the waiver of the preliminary hearing in the intimidation of a witness case, the withdrawal of the first appointed trial attorney, adjournments of the trial date, the determination of prior convictions Vance would admit if he testified, the jury trial, and sentencing. With respect to the jury trial, the report demonstrates that appellate counsel reviewed the voir dire, the fashioning of an attempt jury instruction, the ruling on the scope of testimony from the police investigator presenting the telephone calls from the jail, the stipulation of facts and the colloquies conducted to assure that Vance entered into the stipulations knowingly, voluntarily, and intelligently, the objections made during testimony, the manner in which the trial court handled the possibility that jury members observed certain interactions outside of the courtroom, the ruling on the defense's relevancy objection to certain testimony of the state crime forensic scientist, ruling on the defense motion for a directed verdict, the colloquy with Vance about his decision not to testify, opening and closing instructions, jury instructions, and the polling of the jury. The report also addresses whether there was sufficient credible evidence to support the guilty verdicts, whether the sentences were the result of an erroneous exercise of discretion, and whether any grounds exist for sentence modification. This court is satisfied that the no-merit report properly establishes consideration of, and reasons why, potential issues that might exist from these proceedings are without merit. We will not discuss any of those potential issues further.

The no-merit report also observes that the two cases were joined for trial. It does not, however, discuss whether there is any arguable merit to a claim that the cases were improperly joined. Joinder is a question of law that we independently review. *State v. Linton*, 2010 WI App

129, ¶14, 329 Wis. 2d 687, 791 N.W.2d 222. Under WIS. STAT. § 971.12(4), the trial court may order two complaints tried together if the crimes could have been joined in a single complaint. Thus, the crimes can be tried together if the acts are connected. *See* § 971.12(1) (“Two or more crimes may be charged in the same complaint, information or indictment in a separate count for each crime if the crimes charged, whether felonies or misdemeanors, or both, are of the same or similar character or are based on the same act or transaction or on 2 or more acts or transactions connected together or constituting parts of a common scheme or plan.”).

There is no arguable merit to claim that the intimidation of a witness crime, although occurring after the sexual assault, was not connected to the sexual assault. A claim that cases should be severed because of prejudice is addressed to the trial court’s discretion in weighing potential prejudice against the interests of the public in conducting a trial on the multiple counts. *See Linton*, 329 Wis. 2d 687, ¶15; WIS. STAT. § 971.12(3) (authorizing severance where the defendant will be “prejudiced by a joinder of crimes”). Relief from joinder is only justified when “a higher degree of prejudice, or certainty of prejudice” is shown. *Linton*, 329 Wis. 2d 687, ¶21. Also, the risk of prejudice is not significant when evidence of each crime is admissible in separate trials. *See State v. Hall*, 103 Wis. 2d 125, 141, 307 N.W.2d 289 (1981). Here the trial court adopted the reasoning in the prosecution’s written motion for joinder and thereby considered whether there was substantial prejudice that justified separate trials. The trial court properly exercised its discretion, and any challenge to the joinder of the cases lacks arguable merit.

The no-merit report does not address the handling of the jury’s request to review audio recordings of the 911 or jail calls made after deliberations had started. “When, during its deliberations, a jury poses a question regarding testimony that has been presented, the jury has a right to have that testimony read to it, subject to the discretion of the trial judge to limit the

reading.” *Kohlhoff v. State*, 85 Wis. 2d 148, 159, 270 N.W.2d 63 (1978). The same can be said of video or audio evidence presented during trial. Here the trial court played the audio recordings for the jury in the courtroom. The trial court properly exercised its discretion in replaying the recordings and followed the best practice in doing so in the courtroom. *See State v. Jaworski*, 135 Wis. 2d 235, 243, 400 N.W.2d 29 (Ct. App. 1986) (noting that the better practice is to read requested statements in the courtroom rather than send them to the jury room). Therefore, no issue of arguable merit exists from the manner in which the jury’s request was fulfilled.

Our review of the record discloses no other potential meritorious issues for appeal. Accordingly, this court accepts the no-merit report, affirms the convictions, and discharges appellate counsel of the obligation to represent Vance further in these appeals.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Angela Conrad Kachelski is relieved from further representing Willie Carl Vance in these appeals. *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