



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 IV

December 30, 2020

To:

Hon. James Evenson
Circuit Court Judge
Sauk Co. Courthouse
515 Oak Street
Baraboo, WI 53913-0449

Lori Lowe
Clerk of Circuit Court
200 Oak St.
Mauston, WI 53948

Tania M. Bonnett
District Attorney
P.O. Box 258
Friendship, WI 53934-0258

Melissa M. Petersen
Petersen Law Firm, LLC
P.O. Box 480
Ellsworth, WI 54011

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

Kevin J. Kroener 660390
Jackson Correctional Inst.
P.O. Box 233
Black River Falls, WI 54615-0233

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

2019AP1390-CRNM State of Wisconsin v. Kevin J. Kroener (L.C. # 2015CF81)

Before Fitzpatrick, P.J., Blanchard, and Graham, 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 Melissa Petersen, appointed counsel for Kevin Kroener, 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). Counsel provided Kroener with a copy of the report, and both counsel and this court

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

advised him of his right to file a response. Kroener has not responded. We conclude 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, Kroener was convicted of one count of child enticement, one count of sexual assault of a child by a person who works with children, and one count of sexual intercourse with a child age sixteen or older. On the first count, the court imposed a sentence of 42 months of initial confinement and 54 months of extended supervision, with concurrent sentences of nine and six months on the other counts.

The no-merit report addresses whether the evidence was sufficient to support the convictions. We affirm the verdicts 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 conclude that the evidence was sufficient. The testimony of the victim was not inherently incredible and, if believed, was sufficient to establish the elements of each of the charges. It would be frivolous to argue that the evidence was insufficient.

The no-merit report addresses whether Kroener's trial counsel was ineffective by not moving to suppress evidence. The report states that counsel "has investigated the manner in which law enforcement obtained evidence against Mr. Kroener and can find no basis for any motions to suppress." The report does not provide us with any information from that

investigation, and therefore we do not reach any conclusion based on counsel's assertion. However, the record contains affidavits for search warrants, search warrants, and return information from warrants, and based on the current record they do not provide a basis for a suppression motion.

The no-merit report addresses whether the circuit court erred in admitting other-acts evidence regarding a prior episode involving Kroener that had similarities to the charged conduct in this case. The circuit court applied the proper legal standards, reached a reasonable conclusion, and gave the jury an appropriate limiting instruction. There is no arguable merit to this issue.

The no-merit report addresses whether the circuit court erred in its responses to objections that Kroener made during the State's closing argument. [nm rept at 37-38] Without attempting to discuss each objection here, it would be frivolous to argue that the court's responses were inadequate.

The no-merit report discusses whether there is a basis to request a new trial in the interest of justice under WIS. STAT. § 752.35. No basis for such an argument appears in the record.

The no-merit report discusses jury selection and jury instructions. The record does not show any basis to argue that error occurred in relation to those topics.

The no-merit report addresses whether the court erroneously exercised its sentencing discretion. The standards for the circuit court and this court on discretionary 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. The sentences are within the legal maximums. There is no arguable merit to this issue.

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 Petersen is relieved of further representation of Kroener 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