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January 26, 2021

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

2018AP956-CRNM State of Wisconsin v. Montreavous Lamar Gray
(L.C. # 2014CF4596)

2018AP957-CRNM State of Wisconsin v. Montreavous Lamar Gray
(L.C. # 2015CF672)

Before Brash, P.J., Donald 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).

Montreavous Lamar Gray appeals from judgments of conviction for human trafficking, false imprisonment, intimidation of a victim in furtherance of a conspiracy, and intimidation of a witness in furtherance of a conspiracy. 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). Gray has filed a response to the no-merit report and counsel then filed a supplemental no-merit report.[2] RULE 809.32(1)(e), (f). Upon consideration of these submissions 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.

Gray was charged with human trafficking, false imprisonment, and kidnapping after T.D. reported that Gray, a self-declared pimp, brought her from Illinois to a Milwaukee airport hotel against her will and advertised her as a prostitute. Just before trial, the prosecutor sought to adjourn the trial because jail calls and a letter suggested that Gray had conspired with his mother to pay T.D. $10,000 so T.D. and another witness would not appear at trial. For twice attempting to prevent T.D. from testifying, Gray was charged in a separate case of intimidation of a victim and intimidation of a witness in furtherance of a conspiracy. The cases were joined for trial.

A five-day jury trial was held. T.D., age twenty when the events took place, testified that Gray responded to an ad she had placed offering sex for money. He met her at an Illinois hotel and she was paid $60 for sex. Afterwards, Gray told her he was a pimp, took the money back, and told her she would now be working for him. T.D. was fearful of Gray as he told her that if she did not work for him, he would put her in the hospital. She felt that if she did not comply with his directives, she would either have broken bones, black eyes, or be dead. She complied

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

[2] Gray's response to the no-merit report was originally due in August 2018. Gray was granted numerous extensions of time to file the response. The response was filed September 4, 2020. At sixty-one pages long, it exceeds the allowed limit for an appellant's brief.

with Gray's directive to follow him in her car to another hotel since she was afraid that if she tried to get away, he would either crash her car or follow her wherever she went. At the second hotel, T.D. met Destinee, a woman who was working for Gray. The three of them stayed in one room. A couple hours after they arrived at the hotel, T.D. participated with Destinee in a "two-girl show"—an event in which Destinee had sexual intercourse with a man while the man was touching T.D.'s thigh. Destinee received money and turned the money over to Gray. T.D. participated because she was afraid of Gray. At one point Gray left the second hotel room to get food at McDonald's, leaving T.D. with Destinee. Gray was only gone for ten minutes and caught T.D. outside of the room trying to text on her phone. He told her to get back in the room. Later she lied to Gray in an attempt to leave. She texted Gray that she had a job that she had to get to. Gray told her she was going to be "answering the phone"—meaning she would be taking calls for paying dates. Eventually, Gray told T.D. they were going to Wisconsin. He told T.D. to give her car keys to Destinee so Destinee could drive T.D.'s car to Wisconsin. T.D. rode in Gray's car. She did not want to go to Wisconsin, but felt she had no choice.

T.D. further testified that once in Wisconsin, the three of them took a room at a hotel near the Milwaukee airport. T.D. understood this to mean that an ad would be placed for her services as a prostitute and she would work for Gray. Gray took T.D. with him when he went to a barber shop and T.D. waited in the car while he got his hair cut. She thought about running away but believed he could see the car through the shop window. Also, she did not know anything about the area that she was in. After his hair cut, Gray took T.D. to a "trap house"[3] and told her that was the house where they would live. Then Gray took T.D. to his family's home. After a trip to

[3] T.D. described a trap house as a house people make money by prostituting or selling drugs.

a beauty supply store, Gray's niece spent two to three hours putting a weave in T.D.'s hair. T.D. indicated this was done to make her presentable for prostitution dates. T.D. and Gray then returned to the hotel. At some point during their time in Wisconsin, two ads were placed offering T.D.'s sexual services for money. One was placed by Destinee and the other was placed by T.D. T.D. placed the ad at Gray's direction and with Gray's credit card.

T.D. and other witnesses established that throughout T.D.'s time with Gray, T.D. had been texting people she knew to help her. She texted her best friend Antamonique several times. At one point, she told Antamonique that she was being kidnapped. T.D. told Antamonique to get in touch with T.D.'s uncle Jerry. Jerry made contact with the Hillside, Illinois police department which started an investigation into T.D.'s whereabouts. Eventually Wisconsin police were contacted and it was discovered that T.D. was at the hotel. The police made contact with Gray and T.D. in the room. T.D.'s car key was found on Gray's key ring.

T.D. testified that several days before the first scheduled trial of the trafficking and kidnapping charges, Antamonique received phones calls from the Milwaukee County jail. The individual calling was not Gray but police discovered that the call came from an account of a jail inmate in the same housing unit as Gray. The caller said, "Make sure old girl don't come to court and he got whatever she wants." On a second call the caller said "he'll give you like 10 racks[4] if you want, that ain't no problem for him." T.D. and Antamonique understood the calls to be a bribe not to appear in court. Antamonique informed an investigating officer about the calls. In investigating possible victim or witness intimidation, police listened to a call Gray

[4] It was explained that "10 racks" meant $10,000.

made to his mother about possible arrangements to pay T.D. not to come to court. Police executed a search warrant at the home of Gray's mother. A letter from Gray to his mother's boyfriend was found at the home. In the letter Gray directed the mother's boyfriend to talk to T.D.'s "buddy" about paying T.D. something to give a notarized statement saying she lied.

Gray testified at the trial and contradicted nearly everything T.D. had said. He testified that after paying T.D. $40 for sex, there was no conversation about being a pimp, no threats were made, and that T.D. offered to go with him because she was unhappy in her living situation. Gray said Destinee was just a friend. He indicated that no one else drove T.D.'s car. He said he spent two hours at the Milwaukee barber shop and T.D. was alone for that entire time, with the car keys in the car. He never took her to a "trap house." The whole time she was getting her hair done, T.D. never said she did not want to be there. He denied ever posting any advertisements of T.D. for sexual services, that T.D.'s car key was on his key ring, and that he made arrangements for jail inmate calls. He explained that he telephoned his mother after a jail inmate who knew T.D. told him that T.D. would be sure Gray would get "f - - -ed" over if T.D. did not get some money.

The jury acquitted Gray of the kidnapping charge and found him guilty on all the other charges. Gray was sentenced to concurrent terms on the human trafficking and false imprisonment convictions totaling eight years of initial confinement and ten years of extended supervision. He was sentenced to consecutive terms on the intimidation convictions totaling four years of initial confinement and four years of extended supervision.

The no-merit report addresses and concludes that no issues of arguable merit exist as to whether the circuit court erroneously exercised its discretion in adjourning the trial to permit the

new charges to be filed, whether the evidence was sufficient to sustain the jury's verdicts, and whether the sentence was the result of an erroneous exercise of discretion. In addition to addressing Gray's response in the supplemental no-merit report, appointed counsel also demonstrates his review of the pretrial rulings, jury selection, evidentiary objections during trial, Gray's election to testify, the jury instructions, the propriety of opening and closing statements of counsel, and the polling of the jury. Appointed counsel concludes that no issues of arguable merit arise from those parts of the jury trial. Our review of the records confirms appointed counsel's conclusion as to the potential issues listed here.[5] This court is satisfied that the no-merit report properly analyzes the issues it raises as being without merit, and this court will not discuss them further except as necessary to address Gray's response to the no-merit report.

The no-merit report 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).

[5] We have also reviewed the trial court's handling of the jury's request that certain exhibits or evidence be provided to the jury. The trial court properly exercised its discretion in replaying certain audio tapes and not reading back the entirety of T.D.'s testimony. *See* ***Kohlhoff v. State***, 85 Wis. 2d 148, 159, 270 N.W.2d 63 (1978) ("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."); ***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).

There is no arguable merit to a claim that the intimidation of a victim and witness crimes were not connected to the crimes against T.D. 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 (citation omitted). 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 recognized that the evidence would be admissible in separate trials and there was no substantial prejudice that justified separate trials. Accordingly, the trial court properly exercised its discretion, and any challenge to the joinder of the cases lacks arguable merit.

In his response, Gray discusses thirteen claims that he believes have arguable merit. Appointed counsel's supplemental no-merit categorizes the claims and presents an adequate discussion of why they lack merit. We largely track appointed counsel's summation of Gray's response.[6]

Gray first suggests that in closing rebuttal argument, the prosecutor made disparaging or improper remarks about Gray's trial counsel and "implied a personal belief rather [than] simply the position of the government." *See* ***United States v. Smith***, 982 F.2d 681, 684 (1st Cir. 1993)

[6] Gray's response is lengthy and at times repetitious. To the extent that we have not addressed a specific contention in Gray's response, we have determined it does not warrant an individualized response and that the suggested claim lacks arguable merit. *See* ***Libertarian Party of Wis. v. State***, 199 Wis. 2d 790, 801, 546 N.W.2d 424 (1996) (appellate court need not discuss arguments that lack "sufficient merit to warrant individual attention").

(prosecutor's statement that the defendant was guilty was improper because it implied a personal belief rather than simply the position of the government); ***State v. Johnson***, 153 Wis. 2d 121, 133-34, 449 N.W.2d 845 (1990) (it was imprudent for the prosecutor to use the terms "perjurer," "perjure" and "perjury" but no prejudice found). The prosecutor's rebuttal argument was:

> And it's interesting that [defense counsel] doesn't even try to support what her client testified to. She doesn't try to tell you that what the defendant testified to is the truth, just that what [T.D.] testified to you isn't the truth. And why is it that the defense doesn't go along with the defense's—with the defendant's story about what happened, that this was him just offering to pay for a $300 weave out of the goodness of his heart? Because that's not the truth. The defendant is not telling the truth.

Appointed counsel's supplemental no-merit report states the proper test for what may constitute improper argument and concludes that the prosecutor was making proper comment on the evidence presented. It is not per se improper for the prosecutor to suggest that the defendant is being untruthful. Further, the prosecutor's remarks did not disparage defense counsel. As appointed counsel notes, the jury was instructed that the arguments of counsel are just that—argument only and not evidence. Juries are presumed to follow properly given admonitory instructions. ***State v. Leach***, 124 Wis. 2d 648, 673, 370 N.W.2d 240 (1985). Therefore, there is no arguable merit to a claim that the prosecutor's rebuttal argument was improper or prejudicial.[7]

[7] The second issue suggested in Gray's response is that his trial counsel was ineffective for not objecting to the prosecutor's rebuttal argument and moving for a mistrial. Because there is no arguable merit to a claim that the argument was improper or prejudicial, defense counsel was not ineffective in failing to object. *See* ***State v. Berggren***, 2009 WI App 82, ¶21, 320 Wis. 2d 209, 769 N.W.2d 110 (trial counsel was not deficient for deciding not to make a meritless objection).

Gray asserts more than six variations of ineffective assistance of trial counsel.[8] This court normally declines to address ineffective assistance of counsel claims in the context of a no-merit review if the issue was not raised postconviction in the trial court. *See* ***State v. Machner***, 92 Wis. 2d 797, 804, 285 N.W.2d 905 (Ct. App. 1979) (claims of ineffective assistance by trial counsel must first be raised in the trial court). However, because appointed counsel asks to be discharged from the duty of representation, we must determine whether Gray's claims have sufficient merit to require appointed counsel to file a postconviction motion and request a ***Machner*** hearing.

A claim of ineffective assistance of counsel has two parts: the first part requires the defendant to show that counsel's performance was deficient; the second part requires the defendant to prove that the defense was prejudiced by deficient performance. ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). The deficient performance inquiry is "whether counsel's assistance was reasonable considering all the circumstances." ***Id.*** at 688. Every effort is made to avoid the effects of hindsight and the burden is placed on the defendant to overcome a strong presumption that counsel acted reasonably within a wide range of reasonable assistance and that some challenged conduct "might be considered sound trial strategy." ***Id.*** at 689 (quoted source omitted). The prejudice test is whether "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." ***Id.*** at 694. The prejudice determination considers "the totality of the evidence before the judge or jury." ***Id.*** at 695.

[8] This discussion addresses Gray's potential issue number 3, 6, 7, 8, 10, and 13.

We conclude that Gray's assertions of ineffective assistance of trial counsel lack arguable merit. We address them as follows:

- Trial counsel failed to file a witness list. Trial counsel informed the court of the potential defense witnesses and there was no consequence to counsel's failure to file a witness list, that is, no witness was excluded from testifying. There is no merit to a claim that Gray was prejudiced by what he claims was deficient performance.

- Trial counsel did not call two witnesses who worked at the barber shop and would have corroborated Gray's testimony that he was inside the barber shop for two hours. In the supplemental no-merit report, appointed appellate counsel explains that trial counsel indicated the witnesses were not cooperative and appellate counsel's investigator confirmed that the witnesses had no knowledge of Gray. There is no arguable merit that counsel's failure to call unavailable and uncooperative witnesses was deficient performance.

- Trial counsel did not call Gray's niece, who did T.D.'s hair, to corroborate that it took four hours to put the weave in T.D.'s hair and not once during that time did T.D. indicate she was held against her will. This potential witness could have been harmful to Gray's case because it would have permitted emphasis on Gray's directive in his letter found during the search of his mother's home to "Tell [niece] don't mention anything about pimping." Additionally, Gray suggested during his testimony that his niece was a risky witness when he explained that he directed her not to mention pimping because she was learning disabled and could easily get her mind and words tripped up by the prosecutor's questions. Because a reasonable strategy reason exists for not calling Gray's niece, there is no arguable merit to a claim that counsel's performance was deficient.

- Trial counsel failed to object to the manner in which the prosecution offered a text message from Gray's phone stating: "How you doing, Jeff? I'm back in Milwaukee. Want an appointment?" Gray contends that his trial counsel was aware that the message was sent by Destinee who was using Gray's phone and therefore, it was objectionable to imply that Gray had sent it to a customer to peddle T.D.'s sexual services. There was no basis for trial counsel to object to the admission of the text messages found on Gray's phone and unfortunately, because Destinee was deceased, trial counsel had no witness to explain that the text message was not sent by Gray. There is no arguable merit to a claim that trial counsel's performance was deficient.

- Trial counsel failed to impeach T.D., Antamonique, and the investigating officer by not offering into evidence text messages between T.D.'s cousin, Tamaya, who

was present when the jail phone calls were received, and the investigating officer.[9] Gray quotes text messages pulled from a police report that is not part of the record regarding the officer's efforts to get Tamaya to contact the officer and discuss the call and possible other contact Tamaya may have had regarding efforts to prevent T.D. from testifying. Those text message have no direct relevance to the initial communications to T.D. and Antamonique that evidenced the intimidation. There is no arguable merit to a claim that trial counsel's performance was deficient or prejudicial for not presenting evidence that was not relevant.

- Trial counsel failed to call Tamaya as a witness to testify in a manner that would have permitted the jury to conclude that Tamaya had been instructed by T.D. to receive money from Gray's mother and thereby making T.D. a co-conspirator. Gray speculates that Tamaya could offer such testimony. In the text messages Gray quotes Tamaya wrote: "I didn't do shit. I was just tryna hurry up and get off tha phone. An I gav him my number so that he would stop callin Monique phone cuz she was getting mad." Tamaya herself disavowed any further contact with the persons trying to prevent T.D. from testifying. In the supplemental no-merit report, an attached police report indicates that Antamonique was not aware of any further correspondence between Tamaya and the people trying to pay T.D. off. There is no arguable merit to a claim that trial counsel's performance was deficient for not offering testimony that does not exist.

- Trial counsel failed to call Tamaya as a witness to testify in accordance with a statement to police that T.D. informed her that she willingly went with Gray to Wisconsin. Gray indicates that "Incident Report 150370098," a document that is not part of the record and not attached to Gray's response, includes Tamaya's statement to police officers that T.D. told her she willingly went with Gray. Tamaya's statement also included, according to Gray's summary of the report, that after going with Gray, T.D. saw some message on his phone that she did not like and tried to leave and he would not let her. Thus, testimony from Tamaya would have included the additional information that Gray prevented T.D. from leaving. That would have supported the trafficking and false imprisonment verdicts. There is not arguable merit to a claim that Gray was prejudiced by trial counsel's choice to not call a witness that would have also supplied evidence on elements of the crimes.

- Trial counsel failed to demand decrypted versions of Tamaya's phone records. This appears to be speculation by Gray that there were other unrecovered text

[9] According to T.D.'s and Antamonique's testimony, Tamaya heard the jail calls and communicated with the caller and gave the caller her number. A third jail call to Tamaya's phone was played for the jury. A piece of paper with Antamonique's and Tamaya's phone number was found during the search of Gray's mother's bedroom.

messages between T.D., Antamonique, and Tamaya that would have demonstrated that they conspired to try and get paid for not testifying. There is no arguable merit to a claim that trial counsel's performance was deficient for not acting on speculative inquiries.

- Trial counsel failed to impeach T.D. with an inconsistency regarding T.D.'s belief that a security guard that visited the hotel room was a police detective who had come to assist her. Gray points out that T.D.'s first statement to a police officer was that she believed the security guard was a police detective but that at trial T.D. testified that she did not speak up when the security guard was at the room because she believed the guard knew Gray and would not give her assistance. Regardless of whether T.D. thought the security guard was a guard or police, the evidence was that T.D. did not speak up that she was being held against her will or otherwise seek assistance. Trial counsel used that evidence to argue to the jury that at that point, T.D. had another opportunity to get away and did not take it. Trial counsel had pointed out other inconsistencies in T.D.'s testimony and memory. There is no arguable merit to a claim that Gray was prejudiced by trial counsel's failure to point out one more inconsistency as it would not have turned the tide.

Gray's fourth suggested issue is that the prosecutor violated his right to due process by "maliciously bolstering, and vouching for [T.D.'s] false testimony" and by failing to correct knowingly false testimony. Gray contends that nowhere in any police reports did T.D. mention having tried to contact her "Uncle Fluke," and that she only told police that she had contacted her "Uncle Jerry" who was a police officer. He then points out that at trial T.D. testified that she first tried to call her "Uncle Fluke" who was a police officer with the Forest Park, Illinois police department, and then later contacted "Uncle Jerry." This confusion between attempted contact with Fluke and Jerry was an inconsistency in what T.D. initially told officers and what she was able to recall at trial. It was a point that Gray attempted to impeach T.D. with. "The presentation of inconsistent testimony is not to be confused with presenting perjured testimony." ***State v. Whiting***, 136 Wis. 2d 400, 418, 402 N.W.2d 723 (Ct. App. 1987). The prosecutor did not present knowingly false evidence in this regard. There is no arguable merit to any claim surrounding the presentation of this testimony, or other testimony by T.D. that may have been inconsistent with initial statements to various officers.

The fifth issue Gray asserts is that the prosecutor violated the rule of completeness when a text message on Gray's phone to "Jeff" was put into evidence. As already discussed, a text message was found on Gray's phone: "How you doing, Jeff? I'm back in Milwaukee. Want an appointment?" The reply message was also offered into evidence: "I wish I'd known sooner. I would have for sure but I'm actually on my way up north right now hunting. Wish you were coming along, ha ha." Gray believes it was unfair not to call to the jury's attention to a preceding text message to Gray's phone from Jeff, "Hey beautiful how's you …;)" and a second reply message from Jeff after he explained he was going hunting, "You're pretty hard not to think about … hope your weekend goes good sexy I'll see you for sure Monday or Tuesday." Gray believes proof of the other messages from Jeff would have demonstrated that Destinee was using Gray's phone and therefore, the message about returning to Milwaukee and offering an appointment was not sent by Gray to market T.D.'s sexual services but was sent by Destinee. Within his discussion, Gray suggests the prosecutor withheld exculpatory evidence.

As to Gray's suggestion that the prosecutor withheld evidence, due process is not violated unless the withheld evidence is within the prosecution's exclusive possession. *See* ***State v. Rohl***, 104 Wis. 2d 77, 89, 310 N.W.2d 631 (Ct. App. 1981). All the text messages recovered from Gray's phone were available to the defense.[10] There is no arguable merit to a claim that exculpatory evidence was withheld.

Although a prosecutor is prohibited from presenting knowingly false evidence, there is no affirmative duty to satisfy the rule of completeness. We have reviewed the case law cited by

[10] The preceding and the second reply text messages from Jeff were included on the exhibit admitted at trial.

Gray on this issue. None of it supports a claim that the prosecutor had an affirmative duty to offer the entirety of the text messages to proactively satisfy the rule of completeness.[11] The defense could have offered the other text messages but did not. The failure to do so was not ineffective trial counsel because even if Destinee was using Gray's phone to text Jeff, such use allowed an inference that Gray was Destinee's pimp, a point Gray denied when he testified that Destinee was just a friend. It was reasonable for the defense to stay away from any evidence that would have tended to confirm Gray's status as a pimp. Further, because the text message offering Jeff an appointment tended to suggest that Gray was a pimp and additional messages would have done so as well, admission of just two of the messages exchanged with Jeff did not create a misleading impression so as to violate the rule of completeness. Therefore, there is no arguable merit to a claim that the rule of completeness was violated by the prosecutor or required the admission of additional text messages.

The theme of Gray's remaining claims is that the evidence was not sufficient.[12] His view is that all the evidence was false. However, the jury was the arbiter of credibility. As such the jury was free to find T.D. credible and even to accept one portion of her testimony and reject another portion. *See* ***O'Connell v. Schrader****,* 145 Wis. 2d 554, 557, 427 N.W.2d 152 (Ct. App. 1988). Gray also asserts that there was no evidence that any element of the trafficking crime occurred in Wisconsin. There was, however, evidence that at Gray's direction an ad was placed

[11] The rule of completeness incorporates "the notion that fairness should prohibit a party from presenting an inaccurate depiction of an event through the admission of partial evidence which is taken out of context" and the "critical consideration … is whether the part of the statement offered into evidence creates an unfair and misleading impression without the remaining statements." ***State v Eugenio***, 219 Wis. 2d 391, 408-09, 411, 579 N.W.2d 642 (1998).

[12] This discussion addresses Gray's potential issues numbers 9, 11, and 12.

for T.D.'s sexual services while in Milwaukee. Additionally, T.D. testified that she was still afraid of Gray while in Milwaukee. Contrary to Gray's assertion that there had to be proof of attempted sexual contact, it does not matter that no clients were procured for T.D. while in Milwaukee or that no prostitution services were delivered. There was sufficient evidence of trafficking while in Wisconsin. There is no arguable merit to Gray's claims that the evidence was not sufficient on all elements of the crimes.

Finally, Gray claims that his appointed appellate counsel was ineffective and falsified facts relating to a motion to withdraw that appellate counsel filed in the trial court which indicated that Gray wanted to proceed *pro se*. Gray asserts that at no time did he wish to proceed *pro se* and that appellate counsel only came to a no-merit conclusion because Gray rebuffed a sexual advance counsel made during a phone conversation and Gray made a sexual harassment claim. In addressing counsel's motion to withdraw and Gray's *pro se* motion to discharge counsel and for the appointment of new appellate counsel, the trial court did not find a sufficient conflict to warrant the withdrawal of appellate counsel and the appointment of new counsel. We agree with the trial court's determination that it was not necessary to resolve Gray's dissatisfaction with appellate counsel in light of the fact that appellate counsel had reached a no-merit conclusion. Gray's assertions of sexual harassment and a resulting conflict are not relevant to the disposition of these appeals because this court independently reviewed the records and assessed the potential issues for appeal. We have concluded that there is no arguable merit to further postconviction or appellate proceedings in these cases. This court's decision accepting the no-merit report and discharging appointed counsel of any further duty of representation rests on the conclusion that counsel provided the level of representation constitutionally required no matter what personal conflict exists between appellate counsel and Gray.

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 Gray 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 Gregory Bates is relieved from further representing Montreavous Lamar Gray 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