



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 II

February 24, 2021

To:

Hon. Phillip A. Koss
Circuit Court Judge
Walworth County Courthouse
P.O. Box 1001
Elkhorn, WI 53121

Zeke Wiedenfeld
District Attorney
P.O. Box 1001
Elkhorn, WI 53121

Kristina Secord
Clerk of Circuit Court
Walworth County Courthouse
P.O. Box 1001
Elkhorn, WI 53121-1001

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

Angela Conrad Kachelski
Kachelski Law Office
7101 N. Green Bay Ave., Ste. 6A
Milwaukee, WI 53209

Tayler A. Schoonover 668789
Stanley Correctional Inst.
100 Corrections Dr.
Stanley, WI 54768

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

2019AP1353-CRNM State of Wisconsin v. Tayler A. Schoonover (L.C. # 2017CF102)

Before Reilly, P.J., Gundrum and Davis, 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).

Tayler A. Schoonover appeals from a judgment convicting him of two counts of first-degree sexual assault of a child under thirteen as party to the crime contrary to WIS. STAT. § 948.02(1)(e) (2011-12). Schoonover's appellate counsel filed a no-merit report pursuant to

WIS. STAT. RULE 809.32 (2017-18)¹ and *Anders v. California*, 386 U.S. 738 (1967). Schoonover received a copy of the report and was advised of his right to file a response. He has not done so. Upon consideration of the report and an independent review of the record as mandated by *Anders* and RULE 809.32, we summarily affirm the judgment because there are no issues that would have arguable merit for appeal. WIS. STAT. RULE 809.21.

After a jury trial, the circuit court sentenced Schoonover to concurrent twenty-six-year terms (thirteen years of initial confinement and thirteen years of extended supervision).² Schoonover received sentence credit and was required to register as a sex offender.

Counsel's very thorough no-merit report addresses the following possible appellate issues: (1) pretrial proceedings; (2) all aspects of the jury trial, including sufficiency of the evidence; and (3) whether the circuit court misused its sentencing discretion. After reviewing the record, we conclude that counsel's no-merit report properly analyzes these issues and correctly determines that these issues lack arguable merit. We will briefly address the larger issues in the case.

The jury had before it conflicting evidence as to whether the alleged offenses occurred as the State claimed. It was the jury's function to decide issues of credibility, weigh the evidence and resolve conflicts in the testimony. See *State v. Poellinger*, 153 Wis. 2d 493, 506, 451 N.W.2d 752 (1990). The evidence, viewed in the light most favorable to the State, is not so insufficient in probative value and force that as a matter of law no reasonable jury could have

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

² The corrected judgment of conviction entered on September 27, 2018 confirms that the sentences were intended to be concurrent.

found guilty beyond a reasonable doubt. *Id.* at 501. We conclude that no arguable merit could arise from a challenge to the sufficiency of the evidence.

We agree with appellate counsel that the circuit court engaged in a proper exercise of sentencing discretion after considering various sentencing factors. *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (we review the sentence for a misuse of discretion); *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76 (sentencing objectives and factors discussed).

We note that the judgment of conviction imposes two \$250 DNA surcharges under Wis. STAT. § 973.046 (1r)(a). At the time Schoonover committed the offenses in this case, only one \$250 DNA surcharge could be imposed. Sec. 973.046(1r) (2011-12). By 2018, when Schoonover was sentenced, the law had changed to require one surcharge per conviction. Sec. 973.046 (1r)(a). We conclude that any challenge to the multiple DNA surcharges would lack arguable merit for appeal because they do not constitute an Ex Post Facto Clause violation. *State v. Williams*, 2018 WI 59, ¶43, 381 Wis. 2d 661, 912 N.W.2d 373 (“the mandatory DNA surcharge statute does not have a punitive effect. Accordingly, the statute does not violate the Ex Post Facto Clauses [of the state and federal constitutions]”).

Our independent review of the record did not disclose any arguably meritorious issue for appeal. Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report, affirm the judgment of conviction and relieve Attorney Angela Conrad Kachelski of further representation of Schoonover in this matter.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Angela Conrad Kachelski is relieved of further representation of Tayler Schoonover in this matter.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals