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June 8, 2021

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

2019AP1747-CRNM State of Wisconsin v. Jorge Medina-Patino
(L. C. No. 2017CF1004)

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).

Attorney Ralph J. Sczygelski, appointed counsel for Jorge Medina-Patino, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20),¹ concluding that there is no arguable merit to challenging Medina-Patino's conviction for repeated sexual assault of the same

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

child. Medina-Patino filed a response, and Sczygelski filed a supplemental no-merit report.² Upon consideration of the report, the response, the supplemental report, and an independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude that there is no arguable merit to any issue that could be raised on appeal. Accordingly, we summarily affirm.

The charge against Medina-Patino was based on allegations of multiple incidents in which he touched twelve-year-old Mary's breasts and buttocks.³ At the time, Medina-Patino was Mary's mother's boyfriend. The case proceeded to a jury trial, and the jury found Medina-Patino guilty. The circuit court sentenced Medina-Patino to an eleven-year term of imprisonment consisting of seven years' initial confinement and four years' extended supervision.

The no-merit report addresses whether the evidence was sufficient to support Medina-Patino's conviction. We agree with counsel that there is no arguable merit to this issue. Our review of the sufficiency of the evidence is highly deferential. We will not overturn a conviction "unless the evidence, viewed most favorably to the [S]tate and the conviction, is so insufficient in probative value and force that it can be said as a matter of law that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt." *See State v. Poellinger*, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). Without reciting all of the evidence here, we are satisfied that it was sufficient based on the testimony of Mary and the State's other witnesses. Medina-Patino testified on his own behalf and denied touching Mary's breasts or buttocks as she

² After counsel filed the supplemental report, Medina-Patino filed a letter on July 6, 2020, that we now construe as part of his response.

³ In compliance with WIS. STAT. RULE 809.86(4), we refer to the victim by a pseudonym.

described. However, it was for the jury “to decide which evidence is credible and which is not and how conflicts in the evidence are to be resolved.” *See id.* at 503.

The no-merit report also addresses whether the circuit court erred by denying Medina-Patino’s request that the court conduct an in camera review of Mary’s psychological records in order to determine whether the records should be disclosed to the defense. We agree with counsel that this issue has no arguable merit. An in camera review of the victim’s mental health records is not required unless, consistent with *State v. Green*, 2002 WI 68, 253 Wis. 2d 356, 646 N.W.2d 298, the defendant makes a preliminary evidentiary showing that the records contain noncumulative, relevant information to support a particular defense. *Id.*, ¶33. Here, there is no arguable basis to claim that Medina-Patino made a sufficient showing consistent with *Green* and, therefore, no arguable basis to claim that the court was required to conduct an in camera review of Mary’s psychological records.⁴

Our review of the record discloses no other issues of arguable merit with respect to events before or during trial. We see no basis to pursue any issue with respect to the Spanish-language interpretation of proceedings for Medina-Patino, the circuit court’s pretrial rulings, jury selection, the court’s evidentiary rulings at trial, Medina-Patino’s decision to exercise his right to testify, jury instructions, or counsels’ arguments made to the jury.

⁴ The no-merit report refers to the circuit court’s exercise of discretion under *State v. Green*, 2002 WI 68, 253 Wis. 2d 356, 646 N.W.2d 298. *Green* states that we review de novo whether the defendant has made a sufficient preliminary evidentiary showing. *See id.*, ¶20. Regardless of the standard of review, we agree with counsel that there is no arguable basis to claim that the circuit court was required to conduct an in camera review of Mary’s psychological records.

We turn next to potential claims for ineffective assistance of counsel. To show ineffective assistance of counsel, the defendant must establish both that counsel's performance was deficient and that the deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). To establish deficient performance, "the defendant must show that counsel's representation fell below an objective standard of reasonableness." *Id.* at 688. To establish prejudice, "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. The defendant is not entitled to a postconviction hearing on a claim for ineffective assistance of counsel if the defendant "presents only conclusory allegations." *State v. Allen*, 2004 WI 106, ¶9, 274 Wis. 2d 568, 682 N.W.2d 433.

The no-merit report addresses whether Medina-Patino's trial counsel was ineffective by failing to challenge the sufficiency of the *Miranda*⁵ warnings that the police provided to Medina-Patino. A successful challenge to the *Miranda* warnings could have resulted in the exclusion of testimony that Medina-Patino admitted to a police officer that he may have accidentally grazed Mary's breast area or buttocks. We agree with the no-merit report's conclusion that regardless of whether counsel performed deficiently in this respect, there is no basis to argue prejudice; that is, we see no basis to argue that, if Medina-Patino's statement to the officer had been excluded, there would be a reasonable probability of a different result. First, the officer admitted that the specifics of Medina-Patino's statement may have been unclear due to a language barrier. Second, Mary's mother testified to statements by Medina-Patino that were equally incriminating. Most notably, Mary's mother testified that when she confronted

⁵ See *Miranda v. Arizona*, 384 U.S. 436 (1966).

Medina-Patino regarding Mary's assault allegations, Medina-Patino initially denied the allegations but then asked her to forgive him so they could start over from "zero" and that he was not going to touch Mary. Third, the jury heard other evidence corroborating Mary's allegations, including testimony from Mary's younger sister that on the night of the final assault, Mary came to her sister crying and told her sister that Medina-Patino had been touching her.⁶

In his response to the no-merit report, Medina-Patino raises two additional claims for ineffective assistance of trial counsel. The supplemental no-merit report addresses these two claims. We discuss each in turn.⁷

Medina-Patino claims that his trial counsel was ineffective by failing to call additional witnesses on his behalf. As pointed out in the supplemental no-merit report, however, Medina-Patino makes no allegation as to whom trial counsel should have called as a witness or as to what testimony additional witnesses could have provided in support of his defense. Medina-Patino's allegation that counsel was ineffective in this respect is therefore conclusory and speculative. See *Allen*, 274 Wis. 2d 568, ¶9. Further, nothing in the record shows that there were other witnesses who could have testified in support of Medina-Patino's defense.

⁶ Mary's sister testified that she understood what Mary meant by "touching," and that she told Mary to "go tell Mom."

⁷ In an affidavit attached to his response, Medina-Patino arguably raises what could be viewed as an additional claim for ineffective assistance of counsel. He asserts that, "[o]utside of the hearings, I had no communication with [counsel]." However, the record contradicts this assertion. The transcripts of the circuit court proceedings show several instances in which Medina-Patino's trial counsel referred, on the record, to meetings with Medina-Patino at the jail. Moreover, Medina-Patino makes no allegations in his response as to how any lack of communication with counsel prejudiced his defense. For these reasons, we see no arguable merit to a claim that counsel was ineffective based on any alleged lack of communication.

Accordingly, we conclude that there is no arguable merit to a claim that counsel was ineffective by failing to call additional witnesses.

Medina-Patino next claims that his trial counsel was ineffective by failing to obtain Mary's psychological records. We agree with the conclusion in the supplemental no-merit report that there is no arguable merit to this issue. The records were not disclosed because, as discussed above, Medina-Patino was unable to make the preliminary evidentiary showing required by *Green*. Nothing in the record or in Medina-Patino's response to the no-merit report indicates that counsel could or should have done more to support such a showing.

We turn to sentencing. The no-merit report addresses whether the circuit court erroneously exercised its sentencing discretion. We agree with counsel that there is no arguable merit to this issue. The court discussed the required sentencing factors along with other relevant factors, and the court did not rely on any inappropriate factors. See *State v. Gallion*, 2004 WI 42, ¶¶37-49, 270 Wis. 2d 535, 678 N.W.2d 197. The sentence was lawful and was not so excessive so as to shock public sentiment. See *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We see no other arguable basis for Medina-Patino to challenge his sentence.

In his response to the no-merit report, Medina-Patino asserts that the circuit court failed to consider his lack of prior offenses, character and social traits, age, educational background, and work history. Contrary to this assertion, the record shows that the court considered these factors at sentencing.

Medina-Patino also claims that the circuit court relied on inaccurate information. We see no arguable basis to support such a claim. As he did at trial, Medina-Patino asserts now in his

response that he is innocent. He appears to believe that this assertion of innocence is sufficient to show that the court relied on inaccurate information. The jury, however, found Medina-Patino guilty, and the court's reliance on the jury's finding of guilt is not reliance on inaccurate information.

We see no other assertions in Medina-Patino's response that could support a potential issue for appeal, and our review of the record discloses no other potential issues.

Therefore,

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

IT IS FURTHER ORDERED that attorney Ralph J. Sczygelski is relieved of any further representation of Jorge Medina-Patino 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