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**DISTRICT II**

August 25, 2021

To:

Hon. Mary Kay Wagner  
Circuit Court Judge  
Electronic Notice

Michael D. Graveley  
District Attorney  
Electronic Notice

Rebecca Matoska-Mentink  
Clerk of Circuit Court  
Kenosha County  
Electronic Notice

Winn S. Collins  
Electronic Notice

Marcella De Peters  
Electronic Notice

Mark S. Frederick, #661665  
New Lisbon Correctional Inst.  
P.O. Box 4000  
New Lisbon, WI 53950-4000

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

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2020AP599-CRNM      State of Wisconsin v. Mark S. Frederick (L.C. #2016CF782)

Before Gundrum, P.J., Neubauer and Grogan, 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).**

Mark S. Frederick appeals from a judgment convicting him of two counts of second-degree sexual assault of a child under sixteen (sexual contact) contrary to WIS. STAT. § 948.02(2) (2015-16). Frederick's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20)<sup>1</sup> and *Anders v. California*, 386 U.S. 738 (1967). Frederick received a copy of the report and was advised of his right to file a response. He has not done so. Upon

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

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.

Of the five related offenses charged, the jury convicted Frederick of two offenses and acquitted him of three offenses. The circuit court sentenced Frederick to concurrent eighteen-year terms (eight years of initial confinement and ten years of extended supervision). Frederick received sentence credit and was required to register as a sex offender.

Counsel's no-merit report addresses the following possible appellate issues: (1) the sufficiency of the evidence and (2) 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.

To the extent 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 weigh the evidence, draw reasonable inferences, and resolve conflicts in the testimony. *See State v. Poellinger*, 153 Wis. 2d 493, 506, 451 N.W.2d 752 (1990). The record reveals that for each count, at least one witness gave testimony to support each requisite element. The evidence, "viewed most favorably to the state 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." *Id.* at 501. The standard is the same whether the evidence is direct or circumstantial. *Id.* We conclude that no arguable merit could arise from a challenge to the sufficiency of the evidence.

The record confirms 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).

In addition to the issues discussed above, we have independently reviewed the record. Our independent review of the record did not disclose any arguably meritorious issue for appeal, including any issues relating to pretrial proceedings. 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 Marcella De Peters of further representation of Frederick 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 Marcella De Peters is relieved of further representation of Mark S. Frederick in this matter.

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

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*