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November 2, 2021

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Circuit Court Judge
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Tracey Trinell Williams 241578
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You are hereby notified that the Court has entered the following opinion and order:

2020AP36-CRNM State of Wisconsin v. Tracey Trinell Williams
(L.C. # 2016CF2491)

Before Donald, P.J., Dugan 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).

Tracey Trinell Williams appeals a judgment convicting him of one count of second-degree sexual assault as a habitual criminal. His appointed appellate counsel, Assistant State Public Defender Leon W. Todd, filed a no-merit report pursuant to WIS. STAT. RULE 809.32

(2019-20),¹ and *Anders v. California*, 386 U.S. 738 (1967).² Williams filed a response to the no-merit report. After reviewing the no-merit report and the response, and after conducting an independent review of the record as mandated by *Anders*, we conclude that there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21. Therefore, we affirm.

Williams was charged with second-degree sexual assault (sexual contact with a person suffering from a mental illness or deficiency) as a habitual criminal, contrary to WIS. STAT. §940.225(2)(c). The criminal complaint alleged that Williams assaulted F.C., an adult who is cognitively impaired. Williams was a van driver who transported F.C. to and from her job at the Milwaukee Center for Independence. The complaint alleged that on June 6, 2016, Williams was driving F.C. home from her employment when he parked the van in an alley, got in the back seat with F.C., and sexually assaulted her. Later that evening, F.C. informed her mother, J.H., that she was bleeding from the vaginal area and explained what happened. The jury found Williams guilty as charged. The circuit court sentenced Williams to twelve years of initial confinement and five years of extended supervision.

The no-merit report addresses whether the jury was properly selected and instructed, whether there were any evidentiary issues or procedural errors that entitle Williams to a new trial or other relief, whether there was sufficient evidence to support the conviction, and whether the circuit court properly exercised its sentencing discretion. We are satisfied that the no-merit

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

² Assistant State Public Defender Brian Mullins substituted as counsel while this no-merit report was pending because Todd is no longer employed at the Office of the State Public Defender.

report properly analyzes the issues it raises as without merit, and we will not discuss them further.

In his response, Williams first argues that he did not receive a fair trial because the jury never heard that F.C. identified someone else as the perpetrator when she was asked to view a photo array after the assault. This argument would be without arguable merit because the identity of the perpetrator was not at issue. Williams admitted during the trial that he had sexual contact with F.C.

Williams also argues in his response that he should be granted an evidentiary hearing in the interests of justice under WIS. STAT. § 752.35 because the jury did not hear the evidence that F.C. did not identify him during the photo array. This argument simply rephrases Williams's prior argument, and thus is without arguable merit. We also note that the jury was well aware that F.C. was not able to identify Williams because she was also unable to identify him during her testimony in court, even though he was present.

Williams next argues that he should have been allowed to cross-examine F.C. during the preliminary hearing. F.C. did not testify at the preliminary hearing. Williams had no right to question F.C. because she did not provide testimony. Moreover, any error at a preliminary hearing was waived because there was a fair and errorless trial. *See State v. Webb*, 160 Wis. 2d 622, 628, 467 N.W.2d 108 (1991). There would be no arguable merit to this claim.

Williams next argues that the State did not prove every element of the crime beyond a reasonable doubt because F.C. was not able to identify him at trial. There is no requirement that a victim identify a defendant at trial where, as here, the defendant's identity is not at issue due to the defendant's admission. Williams admitted at trial that he engaged in sexual activity with

F.C. The central issue at trial was whether Williams was aware that F.C. suffered from a mental deficiency. Multiple witnesses testified that F.C.'s mental functioning was limited and that her cognitive capacity was similar to a child of eight or nine years old. In addition, the jury heard testimony from F.C. so it was able to observe how she comported herself. There would be no arguable merit to a claim that the charge was not proven beyond a reasonable doubt based on F.C.'s inability to identify Williams.

Williams next argues in his response that he received ineffective assistance of trial counsel because his trial counsel did not raise the above issues. A defendant receives ineffective assistance of counsel when his counsel's performance was deficient and his defense was prejudiced by the deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). As we explained above, none of the issues Williams has raised in his response have arguable merit. Therefore, his claim that he received ineffective assistance of counsel also lacks arguable merit. See *State v. Golden*, 185 Wis. 2d 763, 771, 519 N.W.2d 659 (Ct. App. 1994) (concluding that counsel does not render ineffective assistance by failing to raise issues that are meritless).

Our review of the record discloses no other potential issues for appeal. Accordingly, we accept the no-merit report, affirm the conviction, and discharge appellate counsel of the obligation to represent Williams further in this appeal.³

³ While our consideration of this appeal was pending, Williams wrote a letter to the Clerk of the Court of Appeals requesting legal advice. We do not provide legal advice to litigants. See *State v. Pettit*, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992). Williams also stated in his letter that he would like to discharge Assistant State Public Defender Brian Mullins. By this order, we have relieved Mullins of the obligation to represent Williams.

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

IT IS FURTHER ORDERED that Attorney Brian Patrick Mullins is relieved from further representing Tracey Trinell Williams in this appeal. *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