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DISTRICT III

August 23, 2022

To:

Hon. William M. Atkinson
Circuit Court Judge
Electronic Notice

John VanderLeest
Clerk of Circuit Court
Brown County Courthouse
Electronic Notice

Erica L. Bauer
Electronic Notice

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Colin J. Johnsen-Renkens 671519
Oshkosh Correctional Inst.
P.O. Box 3310
Oshkosh, WI 54903-3310

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

2019AP1906-CRNM State of Wisconsin v. Colin J. Johnsen-Renkens
(L. C. No. 2018CF311)

Before Stark, P.J., Hruz and Gill, 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 Erica Bauer, appointed counsel for Colin Johnsen-Renkens, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20)¹ and *Anders v. California*, 386 U.S. 738 (1967). Counsel provided Johnsen-Renkens with a copy of the report, and both counsel and this court advised Johnsen-Renkens of his right to file a response. Johnsen-Renkens has not responded. We conclude that this case is appropriate for summary disposition. *See* WIS. STAT.

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

RULE 809.21. After our independent review of the record and the no-merit report, we conclude that there is no arguable merit to any issue that could be raised on appeal.

After a jury trial, Johnsen-Renkens was convicted of one count of first-degree sexual assault of a child under the age of twelve and one count of exposing his genitals to a child, contrary to WIS. STAT. §§ 948.02(1)(b) and 948.10(1)(a). The circuit court sentenced Johnsen-Renkens to twenty-five years of initial confinement followed by seven years of extended supervision on the first count, and a concurrent sentence of one year of initial confinement followed by one year of extended supervision on the second count.

We affirm a verdict on appeal unless the evidence, viewed most favorably to the State and the conviction, is so insufficient in probative value and force that no reasonable trier of fact could have found guilt beyond a reasonable doubt. *State v. Poellinger*, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). Credibility of witnesses is for the trier of fact. *Id.* at 504.

Without attempting to recite the evidence here, we are satisfied that the convictions were supported by the victim's testimony, both in circuit court and in a videotaped forensic interview that was played for the jury. The convictions were further supported by testimony from each of the victim's parents, testimony from a sexual assault nurse examiner who examined the victim at a hospital, and testimony from the police officer who was dispatched to the hospital in response to the sexual assault allegations. This evidence was not inherently incredible and, if believed, was sufficient to prove the elements of the charges. There is no arguable merit to this issue.

The no-merit report also discusses Johnsen-Renkens' decision to testify at trial, thus waiving his right against self-incrimination. "A criminal defendant's constitutional right not to testify is a fundamental right that must be waived knowingly, voluntarily, and intelligently."

State v. Denson, 2011 WI 70, ¶8, 335 Wis. 2d 681, 799 N.W.2d 831. A circuit court is not required to conduct an on-the-record colloquy to determine whether a defendant is knowingly, voluntarily, and intelligently waiving his or her right not to testify, but conducting such a colloquy is acknowledged as the better practice. *Id.* Here, the record reflects that the circuit court did conduct an on-the-record colloquy with Johnsen-Renkens to confirm that his waiver of the right not to testify was made knowingly, voluntarily, and intelligently. We agree with counsel's conclusion that any challenge to the validity of that waiver would be without arguable merit.

As to discretionary issues at sentencing, the standards for the circuit court and this court are well established and need not be repeated here. *See State v. Gallion*, 2004 WI 42, ¶¶17-51, 270 Wis. 2d 535, 678 N.W.2d 197. In this case, the sentences imposed are within the legal maximum. The circuit court considered appropriate factors, did not consider improper factors, and reached a reasonable result. There is no arguable merit to any challenge to Johnsen-Renkens' sentence.

The no-merit report also addresses whether there would be arguable merit to pursuing issues related to pretrial proceedings, jury selection, the circuit court's evidentiary rulings, and the jury instructions. We are satisfied that the no-merit report properly analyzes each of these issues as having no arguable merit.

Our independent review of the record discloses no other potential issues for appeal. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders*. Accordingly, counsel shall be allowed to withdraw, and the judgment of conviction will be summarily affirmed. *See WIS. STAT. RULE 809.21.*

Therefore,

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

IT IS FURTHER ORDERED that Attorney Erica Bauer is relieved of further representation of Colin Johnsen-Renkens 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