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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

September 7, 2022

To:

Hon. Wynne P. Laufenberg
Circuit Court Judge
Electronic Notice

Samuel A. Christensen
Clerk of Circuit Court
Racine County Courthouse
Electronic Notice

Winn S. Collins
Electronic Notice

Bradley J. Lochowicz
Electronic Notice

James Faulkner, #699509
Dodge Correctional Inst.
P.O. Box 700
Waupun, WI 53963-0700

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

2021AP2214-CRNM State of Wisconsin v. James Faulkner (L.C. #2019CF860)

Before Gundrum, P.J., Neubauer and Lazar, 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).

James Faulkner appeals a judgment of conviction entered upon his no-contest plea to second-degree sexual assault by a correctional staff member, contrary to WIS. STAT. § 940.225(2)(h) (2019-20).¹ Faulkner's appointed appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Faulkner was advised of his right to file a response but has not done so. Upon consideration of the no-merit report and an independent review of the record as mandated by *Anders* and

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

RULE 809.32, we conclude there is no arguable merit to any issue that could be raised on appeal and summarily affirm the judgment. *See* WIS. STAT. RULE 809.21(1).

Faulkner was charged in an amended criminal complaint and information with three counts of second-degree sexual assault by a correctional staff member, with additional single counts of strangulation and felony intimidation of a victim. According to the criminal complaint, Faulkner, a correctional officer at Ellsworth Correctional Facility, had a female inmate perform oral sex on him on two occasions in June 2019. On another occasion, he groped her breast and choked her, laughing as she struggled to breathe. He repeatedly threatened her not to tell anyone. The victim stated that Faulkner had ejaculated into her mouth on the last occasion, and she spit it onto her shirt to preserve the evidence. Faulkner initially denied the allegations during a police interview, but later claimed the victim had performed consensual oral sex on him once, and his semen may have gotten on her clothing at that time. Faulkner denied choking or threatening the victim.

Faulkner was released from custody on bond and waived his preliminary hearing. Following plea negotiations, Faulkner agreed to plead no contest to a single count of second-degree sexual assault by a correctional staff member. The remaining counts were dismissed and read in, and the State agreed to recommend a prison sentence of unspecified length. Following a thorough colloquy, the circuit court accepted Faulkner's plea and ordered a presentence investigation report (PSI).

The PSI author recommended a sentence consisting of between six and eight years' initial confinement and between five and six years' extended supervision. The State complied with the plea agreement and recommended an unspecified prison term, whereas Faulkner argued for

probation or, if the judge regarded prison as necessary, a two-to-three-year term of initial confinement.

During the circuit court's sentencing comments, it acknowledged the mitigating circumstances present, including Faulkner's lack of past criminal involvement and his positive employment and family history. Noting that Faulkner had claimed the encounter was consensual, the court recited the history of the statute (including the power disparity inherently present in correctional officer-inmate relationships), observed that lack of consent was not an element under the statute, and recognized that Faulkner's version of a consensual encounter was vigorously disputed by the victim. The court found probation unacceptable and, focusing on the gravity of the offense and the need for public protection, concluded that a fourteen-year prison sentence, consisting of six-and-one-half years' initial confinement and seven-and-one-half years' extended supervision, was appropriate. It found Faulkner ineligible for Challenge Incarceration and Earned Release programming, and it required him to register as a sex offender, among other conditions of extended supervision.

The no-merit report addresses whether Faulkner could raise nonfrivolous arguments related to: (1) the sufficiency of the plea colloquy; (2) whether his plea was knowing, intelligent, and voluntary; and (3) whether the circuit court erroneously exercised its sentencing discretion, in terms of both the sentence imposed and in declaring Faulkner ineligible for prison programming. Our review of the appellate record satisfies us that the no-merit report correctly concludes that any challenge based upon these issues would lack arguable merit. Our review of the appellate record does not disclose any other potentially meritorious issues for appeal.

Based on the foregoing,

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

IT IS FURTHER ORDERED that Attorney Bradley J. Lochowicz is relieved from further representing James Faulkner 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