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DISTRICT IV

September 22, 2022

To:

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

2021AP199-CRNM State of Wisconsin v. Jason J. Stecker (L.C. # 2018CF263)

Before Blanchard, P.J., Graham, and Nashold, 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 Jefren Olsen, as appointed counsel for Jason Stecker, filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20)¹ and *Anders v. California*, 386 U.S. 738 (1967). Stecker responded, counsel filed a supplemental no-merit report, and we ordered counsel to provide additional material. We conclude that this case is appropriate for summary disposition.

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

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

After a jury trial, Stecker was convicted of two counts of first-degree sexual assault of a child under the age of thirteen. The court imposed concurrent sentences of fifteen years of initial confinement and ten years of extended supervision.

The no-merit report addresses the sufficiency of the evidence. We affirm the verdict 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 in detail here, the conviction was supported by the recorded audiovisual statement of the child, the testimony of other family members, physical evidence, and other evidence. None of the evidence was inherently incredible and, if believed, it was sufficient to support the elements of each charge. There is no arguable merit to this issue.

The no-merit report discusses four issues related to the trial. The report concludes that if these issues are to be raised, they must be raised on a theory of ineffective assistance of counsel, because the issues were otherwise forfeited by the absence of sufficient objection from the defense. We agree with that conclusion.

To establish ineffective assistance of counsel a defendant must show that counsel's performance was deficient and that such performance prejudiced his defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). To demonstrate prejudice, a 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. A reasonable probability is one sufficient to undermine confidence in the outcome. *Id.*

The issues are whether trial counsel was ineffective by: (1) not citing controlling legal authority in support of the unsuccessful defense request that the defendant be allowed to explain the nature of his prior convictions; (2) not objecting to testimony by the victim's mother and an investigator that might arguably have been construed as vouching for the victim's credibility; (3) not objecting to an investigator's testimony that, although Stecker denied the allegations in this case, other suspects have denied allegations that were later proven; and (4) not objecting to evidence of other acts by Stecker that the victim described in her audiovisual statement.

The no-merit report concludes that any claim based on these issues would be frivolous due to lack of prejudice, whether viewed individually or cumulatively. We agree.

Regarding the denial of Stecker's request to explain that his four prior convictions were for controlled substance offenses, so as to dispel speculation that they were for sexual offenses, we agree that it would be frivolous to argue that this explanation would create a reasonable probability of a different outcome. First, the jury was given the standard instruction that the evidence of prior convictions bore only on credibility, and could not be used for any other purpose. That instruction implicitly precludes speculation about the nature of the charges. Beyond that, the jury had other, more substantive, evidence to consider that was more directly related to these charges. This included the victim's statement, the mother's testimony, and Stecker's own testimony. With that evidence from both sides available for the jury to evaluate,

based on its own opportunity to view the witnesses, it is unlikely that the jury would focus on speculating about unspecified prior convictions that were only briefly referred to.

As to the other three issues, each of them involved only small amounts of arguably objectionable material. It would be similarly frivolous to argue that removal of this material from the trial would create a reasonable probability of a different result, whether viewed individually or cumulatively.

In Stecker's response to the no-merit report, he raised a concern about lack of discovery of Facebook messages. In counsel's supplemental no-merit report, counsel interprets this concern as relating to text messages between Stecker and the victim's mother. Such messages were referred to at trial by Stecker, who testified that in the texts she said that she would ruin his name and put him in prison. However, the messages themselves were not introduced as evidence.

To address Stecker's response, counsel obtained the text messages and provided them to this court. Counsel concluded that a claim of ineffective assistance based on this material would be frivolous, because the messages do not support Stecker's testimony. We have reviewed the messages, and we agree. Although they show strain and dispute between Stecker and the victim's mother, there is nothing in them that rises to the level of persuasive evidence that would establish prejudice from them not being admitted in this trial.

In Stecker's response to the no-merit report, he also suggested that a law enforcement agency (a sheriff's office) previously concluded that the victim and her mother lied in connection with charges that were filed against someone other than Stecker, which were later dropped. In the supplemental no-merit report, counsel reports that he was unable to find charges that were

filed in that incident. As to whether trial counsel was ineffective by not attempting to offer evidence that the victim's allegation of sexual assault in that case was false, current counsel concludes that the evidence would not likely be admitted under WIS. STAT. § 972.11(2)(b)3. Specifically, counsel emphasizes the absence of any indication that the prior allegation was false. We agree for the reasons stated in the supplemental no-merit report.

The no-merit report addresses Stecker's sentences. As explained in the no-merit report, the sentences are within the legal maximum. As to discretionary issues, 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 court considered appropriate factors, did not consider improper factors, and reached a reasonable result. There is no arguable merit to this issue.

Our review of the record discloses no other potential issues for appeal.

In addition, we grant Stecker's motion to correct an error in the judgment to reflect that Stecker pled not guilty and was convicted after a jury trial.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Olsen is relieved of further representation of Stecker in this matter. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that the appellant's motion to amend the judgment of conviction is granted. On remittitur the clerk of the circuit court shall enter an amended judgment of conviction to properly indicate that Stecker pled not guilty and was convicted after a jury trial.

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

Sheila T. Reiff
Clerk of Court of Appeals