



OFFICE OF THE CLERK
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 I

October 4, 2022

To:

Hon. Joseph R. Wall
Circuit Court Judge
Electronic Notice

George Christenson
Clerk of Circuit Court
Milwaukee County
Electronic Notice

Winn S. Collins
Electronic Notice

John D. Flynn
Electronic Notice

Jeffrey W. Jensen
Electronic Notice

Barry T. Martin 686461
Racine Correctional Inst.
P.O. Box 900
Sturtevant, WI 53177-0900

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

2021AP248-CRNM	State of Wisconsin v. Barry T. Martin (L.C. # 2018CF3522)
2021AP249-CRNM	State of Wisconsin v. Barry T. Martin (L.C. # 2019CF1058)

Before Brash, C.J., Donald, P.J., and White, J.

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).

In these consolidated matters, Barry T. Martin appeals from judgments convicting him of second-degree sexual assault of a child and felony intimidation of a witness. His appellate counsel, Jeffrey W. Jensen, filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20)¹ and *Anders v. California*, 386 U.S. 738 (1967). Martin received a copy of the report, was advised of his right to file a response, and did not do so. We have independently reviewed the

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

records and the no-merit report as mandated by *Anders*. We conclude that there is no issue of arguable merit that could be pursued on appeal. We, therefore, summarily affirm.

Milwaukee County Case No. 2018CF3522

The State charged Martin with first-degree sexual assault of a child and child enticement. According to the complaint, the victim, who was thirteen years old at the time, reported that Martin sent her a number of text messages offering money in exchange for sexual activity. Martin is the victim's uncle and lived in the same house as the victim.

The victim additionally disclosed a number of prior incidents involving sexual contact with Martin that had occurred over the years. According to the complaint, Martin made a statement to police admitting that he sent the text messages to the victim and that on one occasion he put his penis against her vagina.

Milwaukee County Case No. 2019CF1058

While Case No. 2018CF3522 was pending, the State charged Martin with felony intimidation of a witness in this case. The complaint alleged that Martin made telephone calls from jail attempting to dissuade family members from coming to court so that the charges against him would be dropped.

The two cases were consolidated for trial. In Case No. 2018CF3522, the State amended the charges against Martin to include the following crimes: count one, use of a computer to facilitate a child sex crime; count two, child enticement; and in counts three, four, and five, first-degree sexual assault of a child (sexual contact with a child under age thirteen).

Pursuant to plea negotiations, the State filed a second-amended information charging Martin with second-degree sexual assault of a child and child enticement in Case No. 2018CF3522. Martin pled guilty to second-degree sexual assault of a child, and the child enticement charge was dismissed and read-in. In Case No. 2019CF1058, Martin pled guilty to felony intimidation of a witness. For the two charges, the State agreed to recommend eight to twelve years of initial confinement, leaving the length of extended supervision to the circuit court's discretion.

The circuit court accepted Martin's pleas. At a combined sentencing hearing, the circuit court sentenced Martin to ten years of initial confinement and ten years of extended supervision on the second-degree sexual assault charge in Case No. 2018CF3522. The circuit court ordered the sentence to run consecutively to a sentence of two years of initial confinement and two years of extended supervision in Case No. 2019CF1058. The circuit court explained its rationale for ordering a consecutive sentence on the witness intimidation charge, which included the fact that the crime resulted from a separate course of conduct and that it amounted to "an attempt to bury the truth."

The no-merit report addresses the potential issues of whether Martin's pleas were valid and whether the circuit court properly exercised its discretion during sentencing. The plea colloquy, when augmented by the plea questionnaire and waiver of rights forms, the addendums, and the applicable jury instructions, demonstrate Martin's understanding of the information he was entitled to and that his pleas were knowingly, voluntarily, and intelligently entered. *See State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986); *see also State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). Additionally, the

records reveal that the circuit court considered and applied the relevant sentencing factors. This court is satisfied that the no-merit report properly concludes the issues it raises are without merit.

Our review of the records discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the convictions and discharges appellate counsel of the obligation to represent Martin further in these appeals.

Upon the foregoing, therefore,

IT IS ORDERED that the judgments are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Jeffrey W. Jensen is relieved of further representation of Barry T. Martin in these matters. *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