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**DISTRICT I**

February 21, 2023

To:

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

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2021AP2205-CRNM      State of Wisconsin v. John W. Hortman (L.C. # 2017CF3602)

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).**

John Hortman appeals from a judgment of conviction, following a jury trial, of second-degree sexual assault of a child. His appellate counsel, Vicky Zick, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20),<sup>1</sup> and *Anders v. California*, 386 U.S. 738 (1967). Hortman received a copy of the report and was advised of his right to respond. Hortman has responded. We have independently reviewed the record, the no-merit report, and the response as

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

mandated by *Anders*. We conclude that there are no issues of arguable merit that could be pursued on appeal. We, therefore, summarily affirm.

The State charged Hortman with one count of second-degree sexual assault of a child under the age of sixteen. According to the complaint, Hortman forced his fourteen-year-old niece into the bathroom of his father's home and had penis to anus intercourse with her. Hortman's father walked in on the assault after hearing an item drop in the bathroom. The victim, A.H. was then able to escape and call the police. Police later found Hortman hiding in his father's garage. Hortman was naked from the waist down.

Following multiple adjourned trial dates, the matter proceeded to trial where Hortman represented himself with the assistance of standby counsel.<sup>2</sup> Multiple witnesses, including law enforcement and the victim testified. Hortman did not testify. The jury found Hortman guilty as charged. At sentencing, standby counsel informed the trial court that he would be representing Hortman for the purpose of sentencing. The trial court sentenced Hortman to twenty-five years of incarceration, bifurcated as fifteen years of initial confinement and ten years of extended supervision.

Appellate counsel's no-merit report addresses the following: (1) whether Hortman's right to a speedy trial was violated; (2) whether Hortman's shackles prevented him from meaningfully participating in sidebars; (3) whether Hortman was prejudiced by the State's ability to freely move about the courtroom while he was shackled; (4) whether the trial court

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<sup>2</sup> The trial court conducted an appropriate colloquy during pretrial proceedings and found Hortman competent to represent himself. The trial court also appointed standby counsel.

erroneously prevented Hortman from introducing the victim's recorded statement to police; (5) whether a discovery violation occurred; (6) whether the trial court made other erroneous evidentiary rulings; (7) whether the trial court erred in allowing a court officer to remain in the courtroom throughout the trial; (8) whether the State failed to attempt to resolve the matter with the plea agreement; (9) whether standby counsel was ineffective; and (10) whether the trial court erroneously exercised its sentencing discretion.

Hortman's response effectively refutes the issues counsel raises in her no-merit report. We have reviewed the entirety of the record and we agree with counsel's thorough analysis as to each issue. We note, however, that appellate counsel's no-merit report does not address the sufficiency of the evidence presented at trial. When this court considers the sufficiency of evidence presented at trial, we apply a highly deferential standard. *See State v. Kimbrough*, 2001 WI App 138, ¶12, 246 Wis. 2d 648, 630 N.W.2d 752. We "may not reverse a conviction unless the evidence, viewed most favorably to the [S]tate and the conviction, is so insufficient in probative value and force that ... no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt." *See State v. Poellinger*, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). The finder of fact, not this court, considers the weight of the evidence and the credibility of the witnesses and resolves any conflicts in the testimony. *See id.* at 503-04.

The jury had the opportunity to evaluate the testimony of multiple witnesses, including the victim herself. Upon an independent review of the record, we conclude that the evidence presented at trial supports Hortman's conviction. Any further pursuit of this issue would lack arguable merit.

As to sentencing, our review of the record confirms that the trial court appropriately considered the relevant sentencing objectives and factors. *See State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197; *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The trial court discussed Hortman’s character, calling his conduct “horrific and violent” and warranting the need for community protection. The sentence the trial court imposed is within the range authorized by law, *see State v. Scaccio*, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449, and is not so excessive so as to shock the public’s sentiment, *see Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). There would be no arguable merit to a challenge to the trial court’s sentencing discretion.

Our review of the record discloses no other potential issues for appeal. This court has reviewed and considered Hortman’s response. To the extent we did not specifically address an issue in his response, this court has concluded that it lacks sufficient merit to warrant individual attention. Accordingly, this court accepts the no-merit report, affirms the conviction, and discharges appellate counsel of the obligation to represent Hortman further in this appeal.

Upon the foregoing, therefore,

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

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

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

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*