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DISTRICT II

March 1, 2023

To:

Hon. Jeffrey S. Froehlich
Circuit Court Judge
Electronic Notice

LeAnne Karls
Clerk of Circuit Court
Calumet County Courthouse
Electronic Notice

Winn S. Collins
Electronic Notice

Thomas J. Erickson
Electronic Notice

Mark E. Hayes, #378030
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:

2021AP1922-CRNM State of Wisconsin v. Mark E. Hayes (L.C. #2020CF141)

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

Mark E. Hayes appeals from a judgment convicting him of child enticement. His appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22)¹ and *Anders v. California*, 386 U.S. 738 (1967). Hayes received a copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the report and an independent review of the record, we conclude that the judgment may be summarily affirmed because there are no issues with arguable merit for appeal. See WIS. STAT. RULE 809.21.

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

While Hayes, a friend of the victim's family, was living in the family's basement, Hayes engaged in a text exchange with a fourteen-year-old victim, whereby he asked the victim to come to the basement for sexual intercourse while everyone was sleeping. Hayes texted the victim that she owed him for not telling her parents that she had friends over at the house. The victim reported the text exchange to police. When confronted by officers about the text messages, Hayes admitted he had texted the victim to come downstairs for sexual intercourse.

Pursuant to a plea agreement, Hayes pled to a single count of child enticement. In exchange, the State agreed to recommend a prison term of three years' initial confinement and seven years' extended supervision. At sentencing, Hayes asked the court to withhold sentence and place him on probation for four years with some conditional jail time. The court sentenced Hayes to two years' initial confinement and three years' extended supervision. This no-merit appeal follows.

The no-merit report addresses potential issues of whether Hayes' plea was knowingly, intelligently, and voluntarily entered, whether the circuit court erroneously exercised its discretion in sentencing Hayes, and whether the sentence was unduly harsh. This court is satisfied that the no-merit report properly analyzes the issues it raises as without arguable merit, and this court will not discuss them further.

Our independent review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the judgment of conviction, and discharges appellate counsel of the obligation to represent Hayes further in this appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Thomas J. Erickson is relieved of further representation of Mark E. Hayes 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