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DISTRICT III

May 31, 2023

To:

Hon. Emily I. Lonergan
Circuit Court Judge
Electronic Notice

Barb Bocik
Clerk of Circuit Court
Outagamie County Courthouse
Electronic Notice

Winn S. Collins
Electronic Notice

Steven Roy
Electronic Notice

Charles M. Stertz
Electronic Notice

David M. Hayes 294552
Jackson Correctional Inst.
P.O. Box 233
Black River Falls, WI 54615-0233

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

2021AP320-CRNM State of Wisconsin v. David M. Hayes (L. C. No. 2018CF565)

Before Stark, P.J., Hruz and Gill, 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).

David Hayes appeals from a judgment convicting him of: (1) attempted second-degree sexual assault of a child; (2) use of a computer to facilitate a child sex crime; (3) child enticement with intent to have sexual contact; and (4) soliciting an intimate representation from a minor. Attorney Steven Roy has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2021-22).¹ The no-merit report sets forth the procedural history of the case and addresses the sufficiency of the evidence to support the verdicts, the

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

validity of the sentences, and trial counsel's performance. Hayes was advised of his right to respond to the no-merit report, but he has not filed a response. Having independently reviewed the entire record as mandated by *Anders v. California*, 386 U.S. 738, 744 (1967), we conclude that there are no arguably meritorious issues for appeal.

All of the charges arose out of an undercover operation in which a police officer posed online as a fictitious fifteen-year-old girl named "Alexa." At trial, Officer Brandon Stahmann testified about how Hayes had contacted Alexa through a social media site, obtained Alexa's phone number and exchanged sexually explicit texts with her for several months, sent Alexa a picture of an erect penis and asked Alexa for sexually explicit pictures of herself, and eventually made arrangements to meet Alexa in a secluded location, bringing along a condom. The State also introduced transcripts of the social media and text exchanges. The jury convicted Hayes on all four charged counts.

Hayes waived his right to be present at sentencing in person, and the circuit court held a sentencing hearing by videoconference. After hearing from the parties, the court discussed the proper sentencing factors, including the gravity of the offenses, the need to protect the public, and the character of the offender. The court then sentenced Hayes to seven years' initial confinement followed by seven years' extended supervision on the first three counts and one year initial confinement followed by one year extended supervision on the fourth count, with all counts running concurrent to each other and with 678 days of sentence credit.

We agree with counsel's description, analysis, and conclusion that any challenges to the sufficiency of the evidence, the sentences, or counsel's performance would lack arguable merit. Our independent review of the record discloses no other potential issues for appeal. We

conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders*. Accordingly, counsel shall be allowed to withdraw, and the judgment of conviction will be summarily affirmed. *See* WIS. STAT. RULE 809.21.

Upon the foregoing,

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

IT IS FURTHER ORDERED that Attorney Steven Roy is relieved of any further representation of David Hayes in this matter pursuant to 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