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DISTRICT II

October 11, 2023

To:

Hon. John A. Jorgensen
Circuit Court Judge
Electronic Notice

Tara Berry
Clerk of Circuit Court
Winnebago County Courthouse
Electronic Notice

Jeremy Newman
Electronic Notice

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Louis Albert Martinez, #639565
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P.O. Box 900
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You are hereby notified that the Court has entered the following opinion and order:

2021AP1354-CRNM State of Wisconsin v. Louis Albert Martinez (L.C. #2019CF58)

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

Louis Albert Martinez appeals his judgment of conviction, entered upon a jury's verdict, of two counts of repeated sexual assault of the same child. His appellate counsel, Jeremy Newman, has filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967) and WIS. STAT. RULE 809.32 (2021-22).¹ Martinez 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 as mandated by *Anders*, we summarily affirm the judgment

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

because there is no arguable merit to any issue that could be pursued on appeal. *See* WIS. STAT. RULE 809.21.

Martinez was charged in January 2019 of two counts of repeated sexual assault of the same child for incidents that occurred with his stepdaughter, S.M.R., and her friend, M.N.S. The girls reported the assaults to a school counselor, and then were interviewed by a school resource officer from the Oshkosh Police Department in December 2018.

Both girls testified at Martinez's trial in March 2020. S.M.R. testified that her mother married Martinez in 2013, when she was in fifth grade. S.M.R.'s mother was also Martinez's caregiver, as he weighed approximately 600 pounds at that time and had limited mobility.

S.M.R. stated that Martinez's contact with her began with him regularly kissing her on the lips. S.M.R. eventually told him it made her uncomfortable, and he stopped. However, S.M.R. stated that Martinez continued to hug her, during which he began touching her breasts or buttocks. She testified that he touched her breasts numerous times over her clothes, over her bra, and under her bra. She said he also made comments about the size of her breasts. He would also regularly touch her buttocks, over her clothes, after rubbing her back during these hugs. Additionally, S.M.R. stated that twice Martinez outlined her pubic area through her shorts while making comments about her vagina.

S.M.R. testified that these assaults occurred "hundreds of times" between December 2015 and December 2018, when she was under sixteen years old. She explained that Martinez was very controlling regarding the friends she was allowed to have and the clothing she wore. She stated that she was "beyond scared" of what Martinez might do if she refused to give him a hug.

S.M.R. also noted that her mother received money for taking care of Martinez, and that she did not believe they would be able to afford the house they lived in without that financial assistance.

M.N.S. testified that she and S.M.R. became friends in seventh grade, and that she regularly went to S.M.R.'s house. M.N.S. stated that Martinez would ask for a hug and kiss her on the lips every time she went over to their house. She said that while he was hugging her, his hand would sometimes go down her back and touch her buttocks. M.N.S. stated this did not occur every time Martinez hugged her, but that it happened more than three times between December 2016 and December 2018.

S.M.R.'s mother, L.R., also testified. L.R. described Martinez as very controlling, and said when he got angry he would yell and throw things. She stated that S.M.R. told her about the inappropriate touching by Martinez a few months before S.M.R. and M.N.S. reported it to the school counselor. L.R. stated that she tried to ensure that S.M.R. was never alone with Martinez, but that was difficult because she also has a special needs son who requires constant care. She confirmed that she received financial assistance for being Martinez's caregiver, and that financial constraints kept her from leaving him sooner. She is now divorced from Martinez.

The police officer who interviewed the girls testified regarding their statements. M.N.S.'s mother testified as well. She described the behavioral changes she saw in her daughter, stating that M.N.S. became more "closed off" during that time.

Martinez testified in his defense. He stated that L.R. assisted him with his daily needs such as dressing, bathing, and going to the bathroom. He testified that he never intentionally touched the girls, but said he may have brushed against S.M.R.'s breasts during a hug due to his

size. He suggested that S.M.R. may have made these accusations because he had grounded her two days prior to her reporting the assaults.

The jury found Martinez guilty of both counts. He was sentenced to concurrent sixteen-year terms of imprisonment, both bifurcated as eight years of initial confinement followed by eight years of extended supervision. This no-merit appeal follows.

Appellate counsel’s no-merit report first addresses whether there is any arguable merit to challenge the sufficiency of the evidence upon which the jury’s verdicts was based. For a claim relating to the sufficiency of the evidence, this court cannot “substitute its judgment for that of the trier of fact unless the evidence, viewed most favorably to the state and the conviction, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt.” *State v. Poellinger*, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990).

To prove repeated sexual assault of S.M.R. and M.N.S., the State had to demonstrate that Martinez had sexual contact with each girl three or more times within a specified time frame—between December 2015 and December 2018 for S.M.R., and between December 2016 and December 2018 for M.N.S.—and that the girls were under sixteen years old at the time. WIS. STAT. §§ 948.02(2); 948.025(1)(e).² The Record reflects that the jury was properly instructed regarding the elements of the offenses. *See State v. Coleman*, 206 Wis. 2d 199, 212, 556 N.W.2d 701 (1996) (citation omitted) (the circuit court must provide instructions that “fully and

² We note that the offenses span several versions of the Wisconsin Statutes; however, the relevant statutes cited here did not change during that time frame, and remain the same in the current version of the Statutes.

fairly inform the jury of the rules of law applicable to the case and to assist the jury in making a reasonable analysis of the evidence”).

The girls’ testimony satisfied all of these statutory requirements. Although Martinez’s testimony contradicted that of the girls, “[i]t is the function of the trier of fact, and not of an appellate court, to fairly resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.” *Poellinger*, 153 Wis. 2d at 506. We therefore agree with appellate counsel’s assessment that there would be no arguable merit to a claim challenging the sufficiency of the evidence.

The other issue addressed in the no-merit report is whether there would be arguable merit to challenge the circuit court’s exercise of discretion in imposing Martinez’s sentences. The Record reflects that the circuit court considered 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. Furthermore, the sentences imposed are well within the statutory maximum for the offenses, indicating that they are not unduly harsh or unconscionable. *See State v. Scaccio*, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449. We therefore agree with appellate counsel’s conclusion that there would be no arguable merit to a claim that the circuit court erroneously exercised its discretion during sentencing.

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

Upon the foregoing,

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

IT IS FURTHER ORDERED that Attorney Jeremy Newman is relieved from further representing Louis Albert Martinez in this appeal. *See* WIS. STAT. RULE 809.32(3).

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

Samuel A. Christensen
Clerk of Court of Appeals