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DISTRICT II

October 25, 2023

To:

Hon. Peter L. Grimm
Circuit Court Judge
Electronic Notice

Ramona Geib
Clerk of Circuit Court
Fond du Lac County Courthouse
Electronic Notice

Gregory Bates
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

Tyler R. Kruzan, #619495
Oshkosh Correctional Inst.
P.O. Box 3310
Oshkosh, WI 54903-3310

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

2021AP1380-CRNM State of Wisconsin v. Tyler R. Kruzan (L.C. #2019CF749)

Before Neubauer, Grogan 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).

Tyler R. Kruzan appeals from a judgment convicting him of second-degree sexual assault. 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). Kruzan was sent a copy of the report, was advised of his right to file a response, and has not done so. Upon consideration of the report and an independent review of the Record, we conclude there are no issues with arguable merit for appeal. We summarily affirm. *See* WIS. STAT. RULE 809.21.

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

A tip from the National Center for Missing and Exploited Children led to the discovery of child pornography exchanged through Facebook by Kruzan and a teenage girl, Emily.² Emily admitted to police that she and Kruzan had dated for several months after meeting online and that Kruzan had been aware that Emily was only fourteen years old when they became involved. The State charged Kruzan with several child sex offenses stemming from his interactions with Emily.

Pursuant to a plea agreement, Kruzan pled guilty to sexual assault of a child under the age of sixteen for engaging in sexual intercourse with then fifteen-year-old Emily when Kruzan had been twenty years and eight months old. Three other charges were dismissed and read in.³ As to sentencing, the plea agreement provided that the State would be free to argue for any prison sentence within the statutory limits but would cap its initial confinement recommendation at ten years.⁴ The defense would be free to argue for whatever sentence it desired.

Prior to the plea hearing, defense counsel submitted a standard plea questionnaire and waiver of rights form signed by Kruzan. Counsel also submitted a signed addendum to the plea questionnaire. The addendum established Kruzan's understanding that, by entering his plea, he was giving up his rights to file a suppression motion, to challenge the sufficiency of the complaint, and to present certain affirmative defenses. After engaging in a plea colloquy with

² We use a pseudonym to protect the victim's privacy.

³ The dismissed and read-in charges were sexual exploitation of a child, causing a child between the ages of thirteen and eighteen to view sexual activity, and use of a computer to facilitate a child sex crime.

⁴ Sexual assault of a child under the age of sixteen is a Class C felony, which has maximum penalties of forty years of imprisonment and a \$100,000 fine. *See* WIS. STAT. §§ 948.02(2), 939.50(3)(c).

Kruzan, the circuit court accepted Kruzan's guilty plea and convicted him of second-degree sexual assault. The court ordered a presentence investigation (PSI).

At the sentencing hearing, the State argued for ten years of initial confinement followed by ten years of extended supervision. Defense counsel argued for a term of probation with an imposed and stayed prison sentence. The circuit court acknowledged reviewing the PSI, considered Kruzan's allocution, and applied the appropriate sentencing factors. The court then sentenced Kruzan to eight years of initial confinement and twelve years of extended supervision. This no-merit appeal follows.

The no-merit report addresses: (1) whether the circuit court complied with the requirements for accepting a valid guilty plea in a criminal case; (2) whether any pretrial issues were preserved despite the entry of the guilty plea; and (3) whether the circuit court provided a reasonable basis for the sentence imposed in this case. This court is satisfied that the no-merit report correctly analyzes the issues it raises as without merit, and we will not discuss them further.

Upon our independent review of the Record, we have found no other arguable basis for reversing the judgment of conviction. *See State v. Allen*, 2010 WI 89, ¶¶81-82, 328 Wis. 2d 1, 786 N.W.2d 124. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Gregory Bates is relieved from further representing Tyler R. Kruzan 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