



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

September 25, 2024

To:

Hon. Robert P. Dewane
Circuit Court Judge
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

April Higgins
Clerk of Circuit Court
Manitowoc County Courthouse
Electronic Notice

Jamie L. Schrank, #367660
Taycheedah Correctional Inst.
P.O. Box 3100
Fond du Lac, WI 54936-3100

Leonard D. Kachinsky
Electronic Notice

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

2024AP228-CRNM	State of Wisconsin v. Jamie L. Schrank (L.C. #2018CF504)
2024AP229-CRNM	State of Wisconsin v. Jamie L. Schrank (L.C. #2018CF742)

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).

Jamie L. Schrank appeals from judgments of conviction, entered after a jury found her guilty on all counts charged following a four-day trial, and a postconviction order. Her 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). Schrank was sent a copy of the report and advised of her right to file a response—she has not done so. Upon consideration of the report and an independent

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

review of the Record, we conclude there are no issues with arguable merit for appeal. We summarily affirm. *See* WIS. STAT. RULE 809.21.

Schrank was convicted of five felonies and two misdemeanors following a jury trial on two related cases that were joined for trial. She had been charged with physical abuse which caused the death of a three-year-old child in her care; neglect of that same child (under age six) and her son, who was also under six years of age, stemming from her use of methamphetamine around the children when they were in her care; and several drug-related charges, including two counts of possession of methamphetamine and possession of THC and drug paraphernalia. For the most serious of the convictions, physical abuse causing the death of a child, the circuit court imposed a mandatory life sentence and made Schrank eligible for extended supervision after twenty-five years. The court imposed sentences to run concurrent to the life sentence on all other counts for which Schrank was convicted. This no-merit appeal follows.

The no-merit report addresses whether the evidence at Schrank’s jury trial was sufficient to support her convictions. When reviewing the sufficiency of the evidence, we may not substitute our judgment for that of the jury “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). Our review of the trial transcripts persuades us that the State produced ample evidence to convict Schrank of her crimes. That evidence included testimony at Schrank’s trial from the deceased child’s mother, from other babysitters of the deceased child, from members of law enforcement who investigated the events at issue, from health care professionals who were involved in treating the fatally injured child when he was brought to the hospital to address his injuries, and from doctors regarding the autopsy report and the child’s

cause of death. There were also numerous photos of the deceased child's injuries and Facebook messages between Schrank and the child's mother. We agree with counsel that a challenge to the sufficiency of the evidence would lack arguable merit.

The no-merit report also addresses whether there would be arguable merit to a claim of ineffective assistance of trial counsel. A claim of ineffective assistance of counsel has two parts: the first part requires the defendant to show that counsel's performance was deficient; the second part requires the defendant to prove that the defense was prejudiced by the deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). The deficient performance inquiry is "whether counsel's assistance was reasonable considering all the circumstances." *Id.* at 688. Every effort is made to avoid the effects of hindsight and the burden is placed on the defendant to overcome a strong presumption that counsel acted reasonably within a wide range of reasonable assistance and that some challenged conduct "might be considered sound trial strategy." *Id.* at 689 (quoted source omitted). The prejudice test is whether "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* at 694. The prejudice determination considers "the totality of the evidence before the judge or jury." *Id.* at 695. Based on our review of the no-merit report

and the Record, we agree with appellate counsel that any claims of ineffective assistance of trial counsel lack arguable merit.²

The no-merit report further addresses whether joinder of the two cases was proper, whether the circuit court erroneously exercised its sentencing discretion, and whether the postconviction court erred in amending the judgment of conviction rather than granting a new trial on the two counts on which jury instructions were challenged. We agree with counsel's description, analysis, and conclusion that these potential issues lack arguable merit, and we therefore do not address them further.

Our independent review of the Record—including search warrants, jury instructions (as addressed and remedied postconviction), pretrial and evidentiary rulings, the colloquy surrounding Schrank's decision to exercise her right to not testify, opening statements, and closing arguments—does not disclose any potentially meritorious issue for appeal. *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.

² We note that Schrank's appellate counsel filed a postconviction motion regarding two erroneous jury instructions governing the child neglect counts charged and arguing ineffective assistance of trial counsel for failing to object to the erroneous instructions. The circuit court held a hearing on the motion, at which the State conceded that the challenged instructions were erroneous. At the close of the hearing, the court accepted the State's proposed remedy to address the instructions, which was to amend the related information and judgment of conviction to reflect charges for a lesser-included offense of the offenses of which Schrank was convicted.

With the amendment of the convictions to reflect the lesser-included offenses, even if trial counsel performed deficiently in failing to object to the instructions, there was no prejudice to Schrank as a result. The circuit court concluded that the evidence presented at trial was sufficient to support Schrank's convictions on the two lesser-included offenses, and that the sentences the court imposed on the originally charged greater offenses were under the maximum for the lesser-included offenses. We agree with appellate counsel's conclusion in the no-merit report that the remedy imposed by the court sufficiently addressed the errors, and that there are no further issues of arguable merit related to the jury instructions.

RULE 809.32. Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report and relieve Attorney Leonard D. Kachinsky of further representation in this matter.

Upon the foregoing reasons,

IT IS ORDERED that the judgments and order of the circuit court are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Leonard D. Kachinsky is relieved from further representing Jamie L. Schrank in these appeals. *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