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DISTRICT IV

September 26, 2024

To:

Hon. Stephen E. Ehlke
Circuit Court Judge
Electronic Notice

Trisha Rowe
Clerk of Circuit Court
Lafayette County Courthouse
Electronic Notice

Annice Kelly
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

Jason K. Rogers
332 2nd St. North
Stevens Point, WI 54481

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

2023AP978-CRNM State of Wisconsin v. Jason K. Rogers (L.C. # 2019CF100)

Before Blanchard, Nashold, and Taylor, 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).

Attorney Annice Kelly, as appointed counsel for Jason K. Rogers, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22),¹ and *Anders v. California*, 386 U.S. 738 (1967). Counsel provided Rogers with a copy of the report, and both counsel and this court advised him of the right to file a response. Rogers has not filed a response. After our independent review of the record and the no-merit report, we conclude that there is no arguable

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

merit to any issue that could be raised on appeal and that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21.

The State charged Rogers with three counts of intentional physical abuse of a child and one count of disorderly conduct. *See* WIS. STAT. §§ 948.03(2)(b), 947.01(1). The criminal complaint alleged that Rogers intentionally physically abused three different children. The case proceeded to trial and the jury returned guilty verdicts as to each count. On the three counts of child abuse, the court withheld sentence and imposed concurrent three-year terms of probation. On the disorderly conduct count, the court imposed one year of probation, to be served concurrently with the probation imposed on the other counts. This no-merit appeal follows.

The no-merit report addresses whether the evidence presented at trial was sufficient to support the jury's verdicts. We affirm the verdicts unless the evidence, viewed most favorably to the State and the conviction, is so insufficient in probative value and force that no reasonable trier of fact could have found guilt beyond a reasonable doubt. *State v. Poellinger*, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). Credibility of witnesses is for the trier of fact to determine. *Id.* at 504. Without attempting to recite the evidence in detail here, the testimony of two of the three child victims (the youngest was only five at the time of trial and did not testify), as well as the testimony of the mother of all three children, together with other evidence such as photographs, was sufficient to support the jury's verdicts. The evidence presented at trial was not inherently incredible and, if believed by the jury, was sufficient to satisfy the elements of each of the four offenses charged. There would be no arguable merit to challenging the sufficiency of the evidence to support the jury's verdicts. Additionally, we are satisfied that there is nothing in the no-merit report or the record that would give rise to an arguably meritorious claim for ineffective assistance of trial counsel.

The no-merit report discusses several other aspects of the proceedings, such as Rogers's waiver of a preliminary hearing, the circuit court's pretrial rulings on the expert testimony the defense was permitted to introduce, and Rogers's decision not to testify at trial. There is no arguable merit to these issues for the reasons explained in the no-merit report.

The no-merit report also addresses Rogers's sentences, which were withheld for probation. As explained in the no-merit report, withholding sentences and ordering probation is authorized by law. As to discretionary issues, the standards for the circuit court and this court are well-established and need not be repeated here. *See State v. Gallion*, 2004 WI 42, ¶¶17-51, 270 Wis. 2d 535, 678 N.W.2d 197. In this case, the court considered appropriate factors, did not consider improper factors, and reached a reasonable result. There is no arguable merit to this issue.

Our review of the record discloses no other potential issues for appeal.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Annice Kelly is relieved of further representation of Jason K. Rogers in this matter. *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