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DISTRICT IV

November 7, 2024

To:

Hon. Michael D. Zell
Circuit Court Judge
Electronic Notice

Lisa M. Roth
Clerk of Circuit Court
Portage County Courthouse
Electronic Notice

Dennis Schertz
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

Ronald J. Brummer 527201
Stanley Correctional Inst.
100 Corrections Dr.
Stanley, WI 54768

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

2023AP1617-CRNM State of Wisconsin v. Ronald J. Brummer (L.C. # 2021CF238)

Before Kloppenburg, P.J., Blanchard, and Nashold, 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 Dennis Schertz, appointed counsel for Ronald Brummer, has filed a no-merit report seeking to withdraw as appellate counsel pursuant to WIS. STAT. RULE 809.32 (2021-22)[1] and ***Anders v. California***, 386 U.S. 738 (1967). Brummer was sent a copy of the report and has not filed a response. Upon consideration of the report and an independent review of the record,

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

we conclude that there is no arguable merit to any issue that could be raised on appeal. Accordingly, we affirm.

Brummer was charged with repeated sexual assault of a child, incest with a child by a stepparent, and child enticement. A jury found him guilty on all counts. The circuit court sentenced him as follows: sixteen years of initial confinement and fifteen years of extended supervision on the repeated sexual assault of a child count; sixteen years of initial confinement and fifteen years of extended supervision on the incest count, concurrent with the sentence for repeated sexual assault of a child; and two years of initial confinement and ten years of extended supervision on the child enticement count, consecutive to the other sentences.

The no-merit report addresses whether Brummer could challenge the sufficiency of the evidence. We agree with counsel that there is no arguable merit to this issue. An appellate court will not overturn a conviction "unless the evidence, viewed most favorably to the state and the conviction, is so insufficient in probative value and force that it can be said as a matter of law that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt." *See* ***State v. Poellinger***, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). It is not necessary to summarize the evidence. We conclude on our review that the proof was easily sufficient regarding each count of conviction.

The no-merit report briefly addresses other potential issues relating to pretrial and trial proceedings. Based on our independent review of the record, we agree with counsel's assessment that these issues lack arguable merit, and we conclude that there are no other issues of arguable merit relating to the pretrial and trial proceedings. Specifically, there are no issues of arguable merit relating to: the circuit court's exercise of discretion to admit the audiovisual

recording that was made of a statement by the child victim; the court's other pretrial rulings; jury selection; opening statements; evidentiary rulings at trial; Brummer's decision to testify; closing arguments; and the jury instructions.

The no-merit report addresses whether Brummer could claim ineffective assistance of trial counsel. To show ineffective assistance of counsel, a defendant must establish both that counsel's performance was deficient and that the deficient performance prejudiced the defense. ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). To establish deficient performance, "the defendant must show that counsel's representation fell below an objective standard of reasonableness." ***Id.*** at 688. To establish prejudice, "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." ***Id.*** at 694.

Here, based on the no-merit report and our review of the record, we see no arguably meritorious basis to raise an ineffective assistance of trial counsel claim. We now discuss two possible ineffective assistance claims that are not discussed in the no-merit report.

The first possible claim is that trial counsel was ineffective by failing to pursue a limiting instruction for statements that the child victim made spontaneously on the first day of trial just after she completed her testimony. These statements included "I'm glad I told the truth," "I was so brave," and "Mom, I only told the truth." Defense counsel initially indicated that he would request a limiting instruction informing the jury to disregard those statements, and the circuit court appeared to agree to providing an instruction, but counsel later withdrew his request. Counsel's withdrawal of his initial request appears to have been an objectively reasonable decision. Pursuing the limiting instruction could have focused the jurors' attention on the

statements just before they were sent out to deliberate. More importantly, given the strength of the evidence against him, Brummer could not reasonably argue that the absence of a limiting instruction prejudiced his defense.

The second possible ineffective assistance claim is that trial counsel was ineffective by failing to object on "other acts" grounds to evidence of an incident in which Brummer was alleged to have "behaved inappropriately" toward his niece while intoxicated. Regardless of whether counsel performed deficiently in this respect, we conclude that Brummer could not reasonably argue that the absence of an other acts objection prejudiced his defense. The remaining evidence against Brummer is simply too strong for that to be a plausible argument.

We turn to sentencing. The no-merit report addresses whether Brummer could challenge his sentences as excessive or as an otherwise erroneous exercise of the circuit court's sentencing discretion. We agree with counsel that there is no issue of arguable merit relating to sentencing. The circuit court addressed the required sentencing factors along with other relevant factors. *See* ***State v. Gallion***, 2004 WI 42, ¶¶37-49, 270 Wis. 2d 535, 678 N.W.2d 197 (explaining sentencing standards and factors). The court did not rely on any improper factors. Brummer could not reasonably argue that his sentences were unduly harsh or so excessive as to shock public sentiment. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975) (A circuit court erroneously exercises its discretion when "the sentence is so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances."). We see no other arguable basis on which Brummer might challenge his sentences.

Our review of the record discloses no other issues with arguable merit.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Dennis Schertz is relieved of any further representation of Ronald Brummer 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