



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 III/IV

May 6, 2013

To:

Hon. Kendall M. Kelley
Circuit Court Judge
Brown County Courthouse
100 S. Jefferson St, P.O. Box 23600
Green Bay, WI 54305-3600

Jason B. Beck
Clerk of Circuit Court
Brown County Courthouse
100 S. Jefferson St, P.O. Box 23600
Green Bay, WI 54301-3600

Gina Frances Bosben
Frances Bosben Law Office
520 University Ave., #355
Madison, WI 53703-1982

David L. Lasee
District Attorney
P.O. Box 23600
Green Bay, WI 54305-3600

Gregory M. Weber
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Randall Blue 188858
Green Bay Corr. Inst.
P.O. Box 19033
Green Bay, WI 54307-9033

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

2012AP345-CRNM State of Wisconsin v. Randall Blue (L.C. #2010CF701)

Before Lundsten, P.J., Sherman and Blanchard, JJ.

Attorney Gina Frances Bosben, appointed counsel for Randall Blue, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2011-12)¹ and *Anders v. California*, 386 U.S. 738 (1967). Counsel provided Blue with a copy of the report, he responded to it, and counsel filed a supplemental no-merit report. After our independent review of the record, we conclude there is no arguable merit to any issue that could be raised on appeal.

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

A jury found Blue guilty of one count of second-degree sexual assault, one count of attempted second-degree sexual assault, and one count of bail jumping. The court imposed consecutive sentences totaling fourteen years of initial confinement and twenty-three years of extended supervision.

We first address sufficiency of the evidence. We affirm the verdict 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). Without attempting to recount the details of the evidence here, one aspect of the evidence is sufficient to support the sexual assault charges. The testimony of the victim and her son was not inherently incredible and, if believed by the jury, was sufficient to establish the elements on those charges. A finding of guilt on those charges, together with the evidence that Blue was on bond at the time, was sufficient to support the bail jumping charge. There is no arguable merit to this issue.

The no-merit report addresses whether the circuit court's decision to grant a continuance of the trial was a violation of Blue's statutory right to a speedy trial under WIS. STAT. § 971.10. There is no arguable merit to this issue. Even if we were to conclude that the court erred by postponing the trial, no law provides that this is a basis to reverse the conviction that occurred at the trial.

The no-merit report addresses whether the circuit court erroneously exercised its sentencing discretion. The standards for the circuit court and this court on sentencing issues 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, such as

Blue's prior record, his earlier failures on supervision, his lack of remorse, his need for treatment, and the need to protect the public. The court did not consider improper factors, and reached a reasonable result. There is no arguable merit to this issue.

The no-merit report also addresses several other issues that we conclude are frivolous for the reasons described in the report.

In Blue's response, he identifies twenty potential issues. Some of them we are unable to address because we are unable to discern a developed argument. For example, stating only that trial counsel was ineffective is a conclusion, not an argument. Other issues we can address.

Blue asserts that the trial judge was biased because, while granting the continuance, the court expressed doubt that Blue would appear in court if released on bond until the trial. There is no merit to this argument because that was a reasonable factor for the judge to consider. Blue asserts that the judge believed Blue was guilty, but the judge did not say that.

Blue asserts that the victim lied under oath, that witnesses told different stories, that the victim's behavior was inconsistent with the behavior of a sexual assault victim, that the victim's son was manipulated by the victim, that Blue's DNA was not found in certain places on the victim that he allegedly touched, and that his girlfriend's testimony was inconsistent with the State's case. These points go to the sufficiency of the evidence and the credibility of witnesses. Credibility of witnesses is for the trier of fact to decide, not this court. *Poellinger*, 153 Wis. 2d at 504.

Blue asserts that the jury could see his orange jail bracelet during trial and that this may have affected the jury's verdict because it knew he was in jail. Blue's attorney noted this

potential issue for the record, but did not seek any relief, such as a mistrial. The question would therefore be whether trial counsel was ineffective in not seeking a mistrial. We conclude it would be frivolous to argue that there was prejudice from this issue. As part of the bail jumping charge, the jury already knew that Blue had been on bail for a felony. The additional effect of the jail bracelet would be comparatively insignificant.

Blue asserts that the jury's verdicts were inconsistent. We assume he is referring to the fact that the jury acquitted him on another sexual assault count, and related charges, from that same evening. There is nothing inconsistent about the verdicts. The jury could reasonably have concluded that the later charges were not proven beyond a reasonable doubt, based on the testimony of the victim and her son.

Blue notes that the circuit court did not discuss the sentencing guidelines. Even if we were to conclude that the court should have discussed the sentencing guidelines, there is no merit to this issue on appeal because a relevant statute has been repealed and the circuit court would not be required to consider the guidelines on resentencing. *State v. Barfell*, 2010 WI App 61, ¶14, 324 Wis. 2d 374, 782 N.W.2d 437.

We have also considered the remainder of the issues Blue raises, and conclude that none of them have arguable merit. Our review of the record discloses no other potential issues for appeal.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Gina Frances Bosben is relieved of further representation of Randall Blue in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals