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July 23, 2013

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

2011AP758-CRNM State of Wisconsin v. Dennis J. Hiroskey (L.C. # 2009CF34)

Before Sherman, Blanchard and Kloppenburg, JJ.

Attorney Chris Gramstrup, appointed counsel for Dennis Hiroskey, has filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2011-12).¹ Counsel provided Hiroskey with a copy of the report, and he responded to it. We conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1). After our independent review of the record, we conclude there is no arguable merit to any issue

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

that could be raised on appeal, but we order the judgment amended to conform to the record as to sentence credit.

After a court trial, Hiroskey was convicted of one count of first-degree sexual assault of a child. The court imposed a sentence of nine years of initial confinement and eight years of extended supervision.

The no-merit report addresses whether the evidence was sufficient. We affirm the finding of guilt 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. *Id.* at 504.

Without attempting to recite the evidence in detail here, we are satisfied that it was sufficient. The finding was supported by the testimony of the child and the child's mother, Hiroskey's own admissions that placed him in the room, and the lab results that suggested the presence of non-seminal male DNA on the victim. None of that evidence was inherently incredible and, if believed, it was sufficient to meet the elements of the crime charged.

The no-merit report addresses whether the 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 the need to protect the public, Hiroskey's likelihood to reoffend, Hiroskey's treatment needs, and the seriousness of the offense. The court did not consider improper factors, and reached a reasonable result. There is no arguable merit to this issue.

In Hiroskey's response, he refers several times to bias by the presentence report author. However, Hiroskey does not state any specific facts that suggest bias by the presentence author. Hiroskey also asserts that he was sentenced based on inaccurate information about his sexual history that made him appear to be a "sexual predator," specifically, that he learned about sexual topics from classes at school and from friends, and that he viewed Playboy several times in the 1970s. However, there is no indication that the circuit court relied on these facts and, furthermore, the described conduct appears to be relatively common and does not imply predatory behavior. Finally, Hiroskey asserts that the court relied on inaccurate information about his criminal record, but he does not appear to state how that information was inaccurate. There is no arguable merit to any of these issues.

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

At the end of the sentencing hearing the parties agreed that Hiroskey should receive 632 days of sentence credit, and the court orally granted that amount. However, the judgment of conviction shows zero days of credit due. Therefore, on remand we order the clerk of the circuit court to issue an amended judgment.

IT IS ORDERED that the judgment of conviction is summarily affirmed. *See* WIS. STAT. RULE 809.21(1).

IT IS FURTHER ORDERED that Attorney Gramstrup is relieved of further representation of Hiroskey in this matter. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that on remand the clerk of the circuit court shall enter an amended judgment, and send it to the Department of Corrections, indicating that 632 days of sentence credit are due.

Diane M. Fremgen
Clerk of Court of Appeals