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June 8, 2016

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

2015AP2385-CRNM In the interest of C.W., a person under the age of 18:
State of Wisconsin v. C.W. (L.C. # 2007JV1118A)

Before Neubauer, C.J.¹

Counsel for C.W. has filed a no-merit report pursuant to WIS. STAT. RULE 809.32, concluding that no arguably meritorious grounds exist to challenge the trial court's orders (1) requiring C.W. to register as a sex offender and (2) denying his motion for postdisposition

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

relief. C.W. received a copy of the report and was advised of his right to file a response. He has not done so. Upon consideration of the no-merit report and an independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), and RULE 809.32, we conclude there are no arguably meritorious issues for appeal, and we summarily affirm the orders. See WIS. STAT. RULE 809.21.

In 2009, C.W. was adjudicated delinquent for second-degree sexual assault of a child, contrary to WIS. STAT. § 948.02(2) (2007-08). At disposition, the trial court ordered placement in the Department of Corrections (DOC) but stayed that order in favor of supervision by the Milwaukee County Department of Human Services. At the parties' request, the trial court deferred a determination on whether C.W. would be required to register as a sex offender.² The stayed placement order was imposed seven months later, and C.W.'s dispositional order was extended in 2010, 2011, 2012, and 2013. On July 11, 2013, following a hearing, the trial court entered an order requiring C.W. to register as a sex offender. Appointed counsel filed a postdisposition motion seeking a new hearing on the registration issue, alleging that the expert testimony concerning C.W.'s recidivism risk was inaccurate and that a more recent risk assessment placed C.W. at "a relatively low risk for future sexual offenses."

Before the postdisposition motion was heard, C.W. was charged with new sexually related offenses. At C.W.'s request, the trial court stayed postdisposition proceedings "until such time as the parties notify the court that criminal charges are resolved and the motion is ripe for

² The trial court stated it was temporarily staying the registration requirement and set a review hearing. In effect, the trial court ordered registration as required by WIS. STAT. § 938.34(15m)(bm), and deferred a decision on whether to stay that order under WIS. STAT. § 938.34(16), and *State v. Cesar G.*, 2004 WI 61, ¶¶2, 52, 272 Wis. 2d 22, 682 N.W.2d 1.

court consideration.” C.W. subsequently pled guilty to two counts of fourth-degree sexual assault in adult court. Appointed counsel withdrew the request for an evidentiary hearing and asked the court to decide C.W.’s postdisposition motion without a hearing. Counsel explained that due to the new convictions, the doctor who had assessed C.W. as a “relatively low risk for future sexual offenses” could not testify to the accuracy of his assessment. By order entered November 12, 2015, the trial court denied C.W.’s postdisposition motion for a new hearing on whether to stay the sex offender registration requirement.

The no-merit report addresses whether the trial court properly exercised its discretion in ordering C.W. to register as a sex offender. WISCONSIN STAT. § 938.34(15m)(bm), requires a court to order sex offender registration for juveniles like C.W., who are adjudicated delinquent for a violation of WIS. STAT. § 948.02(2).³ However, WIS. STAT. § 938.34(16) authorizes the court to stay the execution of an order requiring sex offender registration. *State v. Cesar G.*, 2004 WI 61, ¶¶2, 25, 52, 272 Wis. 2d 22, 682 N.W.2d 1. The decision whether to stay registration is a discretionary determination for the trial court. *Id.*, ¶42. In making its determination, the trial court is to consider the seriousness of the offense and the factors enumerated in WIS. STAT. §§ 938.34(15m)(c) and 301.45(1m)(e). *Cesar G.*, 272 Wis. 2d 22,

³ WISCONSIN STAT. § 938.34(15m)(bm) requires registration for certain enumerated offenses “unless the court determines, after a hearing on a motion made by the juvenile, that the juvenile is not required to comply under [WIS. STAT. §] 301.45(1m).” It appears from the record that C.W.’s offense did not meet the criteria for exemption under § 301.45(1m).

¶¶50, 52.⁴ The burden is on the juvenile to prove by clear and convincing evidence that a stay should be granted. *Id.*, ¶51.

Here, the trial court considered that C.W.'s victim was his sister, he was babysitting her at the time, and she was more than four years younger than C.W. The court considered C.W.'s high scores on the available risk assessment instruments, including his high score on antisocial behavior. The court concluded:

I think it's in the interest of public protection to have [C.W.] report, because I think it's not possible to evaluate his individual risk. We're talking here about the risks of averages of kids who have been in this situation, and we don't know to what extent his treatment did affect the scores on [the assessment]. But what we do know is that he has continued to act out in antisocial fashions, and that he hasn't had an opportunity to reoffend sexually against the type of victim that he originally offended against.

The trial court examined the relevant facts, applied the proper standard and used a demonstrably rational process to reach a reasonable conclusion. *See id.*, ¶42. Any challenge to its exercise of discretion would be without arguable merit.

We also agree with the no-merit report's conclusion that the trial court properly denied C.W.'s postdisposition motion. The two grounds for C.W.'s motion related to his risk of sexually reoffending. Appointed counsel withdrew the request for an evidentiary hearing after C.W. was convicted of two counts of fourth-degree sexual assault. In denying the motion, the trial court accurately stated the alleged grounds for relief and that the motion was put on hold

⁴ These factors include: (1) the ages, at the time of the violation, of the juvenile and the victim; (2) the relationship between the juvenile and the victim; (3) whether the violation resulted in bodily harm; (4) the mental capacity of the victim; (5) the probability that the juvenile will commit other violations in the future; and (6) any other factor the court deems relevant. *Cesar G.*, 272 Wis. 2d 22, ¶50.

pursuant to a request by C.W.'s counsel asserting that "counsel agree that the resolution of [C.W.'s new] case will be highly relevant to this court's decision on the motion to stay sex offender registration." The trial court's written decision further considered that C.W.'s adult case resulted in two convictions and counsel's assertion that the doctor who evaluated C.W. for purposes of the motion would no longer testify as to the accuracy of his assessment. We are satisfied that the no-merit report properly analyzes this issue as without arguable merit and will not address it further.

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the orders, and discharges appellate counsel of the obligation to represent C.W. further in this appeal. Therefore,

IT IS ORDERED that the orders requiring C.W. to register as a sex offender and denying his postdisposition motion are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Eileen A. Hirsch is relieved from further representing C.W. in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals