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**DISTRICT III**

March 17, 2026

To:

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Circuit Court Judge  
Electronic Notice

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Clerk of Circuit Court  
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Dennis Schertz  
Electronic Notice

Daniel Z. Sims 463052  
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P.O. Box 31  
Plymouth, WI 53073

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

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2024AP1855-CRNM      State v. Daniel Z. Sims (L. C. No. 2022CF372)

Before Stark, P.J., Hruz, and Gill, 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).**

Daniel Sims appeals from a judgment convicting him, following a jury trial, of third-degree sexual assault. Attorney Dennis Schertz has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2023-24).<sup>1</sup> The no-merit report sets forth the procedural history of the case and addresses the sufficiency of the evidence to support the verdict, two motions for a mistrial, the sentence imposed, and trial counsel's performance. Sims was sent a copy of the report, but he has not filed a response. Having

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2023-24 version.

independently reviewed the entire record as mandated by *Anders v. California*, 386 U.S. 738, 744 (1967), we conclude that there are no arguably meritorious issues for appeal, aside from a minor amendment of the judgment of conviction to conform to the verdict. Therefore, counsel shall be allowed to withdraw, and the judgment of conviction will be summarily affirmed, as amended by this order. *See* WIS. STAT. RULE 809.21.

### **Joinder**

The complaint charged Sims with one count of second-degree sexual assault of an unconscious victim, arising from an incident that occurred on July 1, 2017, and one count of third-degree sexual assault, arising from an incident that occurred between June 1 and September 1, 2018.

Two or more crimes may be jointly charged in a single complaint or information when they are of the same or similar character, are based on the same act or transaction, or are based on multiple transactions that are connected together or constitute parts of a common scheme or plan. WIS. STAT. § 971.12(1). A circuit court has discretion to grant severance upon weighing the potential prejudice to the defendant from a joint trial against the public interest in judicial economy. Sec. 971.12(3).

Here the charges involved the same victim, Kayla,<sup>2</sup> and were based on an alleged pattern of assaults that occurred while Sims and Kayla were living together. Because the alleged assaults were of a similar character and evidence of each alleged assault would have been

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<sup>2</sup> This matter involves the victim of a crime. Pursuant to the policy underlying WIS. STAT. RULE 809.86(4), we use a pseudonym instead of the victim's name.

admissible at a trial on the other charge (as we will discuss further below regarding other-acts evidence), the charges were properly joined. Moreover, the fact that the jury acquitted Sims of the second-degree sexual assault charge demonstrates that it was able to evaluate each charge on its own merit.

### **Conflict of Interest**

During a pretrial conference, Sims made an oral request that the circuit court judge recuse herself because she had served as a guardian ad litem (GAL) for Sims when he was a child. The circuit court directed Sims's trial counsel to file a written motion if he wished to raise a conflict of interest. The judge noted in a subsequent proceeding that she did not recall having been Sims' GAL and that she did not believe there was any conflict because the earlier case was not the same or a substantially similar matter. *See* WIS. STAT. § 757.19(2)(c) (disqualifying a judge who served as counsel to a party in the same action). We see nothing in the record to suggest that the judge's prior role as a GAL for Sims created a conflict of interest or would have any bearing on this case.

### **Amended Information**

More than four months after the arraignment, the State filed an amended information adding a domestic violence enhancer to each of the sexual assault charges under WIS. STAT. §§ 968.075(1)(a)3. and 973.055(1). *See Whitaker v. State*, 83 Wis 2d 368, 374, 265 N.W.2d 575 (1978) (allowing the circuit court to permit the amendment of an information within a reasonable time after arraignment, so long as the defendant's rights to notice, a speedy trial, and opportunity to defend are not prejudiced). However, the domestic violence enhancers were never submitted to the jury as a special verdict. The State conceded at sentencing that the conviction therefore

should be only for third-degree sexual assault. Accordingly, the domestic violence designation should be removed from the judgment of conviction to conform to the actual verdict.

### **Speedy Trial**

The trial in this matter was held just over nine months after the complaint was filed. Although Sims remained in pretrial custody on a bond of \$10,000, he waived the right to a speedy trial at his arraignment and never filed a speedy trial demand. We see nothing in the record that would support a claim of either a statutory or constitutional speedy trial violation. *See generally* WIS. STAT. § 971.10(2)(a); *State v. Ramirez*, 2025 WI 28, ¶¶30-53, 416 Wis. 2d 641, 22 N.W.2d 821 (discussing elements of a constitutional speedy trial claim).

### **Pretrial Evidentiary Rulings**

The circuit court granted a series of routine motions in limine that were filed by the State, without objection from Sims. Sims did object to the State's motion to admit other-acts evidence and filed his own *Daubert* motion to exclude testimony from the State's proposed expert witness on domestic violence. *See generally Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993) (discussing courts' gatekeeping function for scientific evidence).

The State proposed to introduce other-acts evidence related to three other pending criminal cases against Sims. In Pierce County Case No. 2022CF258, Sims was charged with committing another sexual assault against Kayla, the victim in this case, by threatening her with a crowbar before pushing her onto a bed and having intercourse with her without her consent, which occurred after she had told him to move out of a residence they had been sharing. In Dunn County Case No. 2022CF150, Sims was charged with sexually assaulting his own minor daughter by climbing into bed with her and rubbing his penis against her butt on one occasion

and by squeezing her butt while the two were on a couch on another occasion. In Dunn County Case No. 2022CF373, Sims was charged with sexually assaulting Kayla's minor daughter by placing her hand on his penis while the two were on a couch on one occasion and by hugging her and grabbing her butt on another occasion.

The circuit court determined that all of the other-acts evidence the State sought to introduce was relevant to show motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident and that the probative value of the evidence related to Kayla was not substantially outweighed by the danger of unfair prejudice or of confusing the jury. *See generally State v. Sullivan*, 216 Wis. 2d 768, 785-89, 576 N.W.2d 30 (1998) (discussing the test for the admission of other-acts evidence); WIS. STAT. § 904.04(2)(b) (allowing greater latitude for the admission of other-acts evidence in sexual assault cases). However, the court found that that the probative value of evidence relating to the assaults against the two children was substantially outweighed by the danger of unfair prejudice.<sup>3</sup> The court's decision to admit evidence of another sexual assault against Kayla but to exclude evidence of other sexual assaults against the two children was a reasonable exercise of its discretion under *Sullivan*.

The State's proposed expert witness, Jenelle Haddad, was the Domestic Violence Program Director at Family Support Center. After hearing testimony regarding Haddad's qualifications and experience, the circuit court concluded that Haddad had specialized and reliable knowledge that could be of assistance to the jury. The court permitted Haddad to testify

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<sup>3</sup> The circuit court did allow the children to testify about Sims' behavior when drunk or any incidents they had witnessed between Sims and Kayla.

about delayed disclosure in sexual assault cases and about a tool known as the Power and Control Wheel that is commonly used to help victims understand the dynamics of domestic violence. The court’s decision was a reasonable exercise of its discretion under *Daubert* and *State v. Dobbs*, 2020 WI 64, ¶¶42-43, 392 Wis. 2d 505, 945 N.W.2d 609.

### **Voir Dire**

The circuit court excused a number of potential jurors for cause. Although the court declined to strike one potential juror to whom Sims had objected, that person was not ultimately chosen for the jury. Sims informed the court that he had no objection to the selected jurors, and we see no basis in the record for challenging the impartiality of the jury.

During voir dire, the prosecutor asked whether there was anyone on the panel “who feels [that] they could never convict a person even if the State met its burden if it was just one person’s word against another.” Sims objected to the question on the ground that it created an expectation that he would testify, thus infringing on his constitutional right to remain silent. Following a sidebar, the circuit court inquired whether there was anyone on the panel who did not understand that Sims had a right to remain silent, who would hold his silence against Sims, or who could not be impartial if Sims did not testify. The court concluded that its follow-up questions were sufficient to address any violation of Sims’ rights (which it was not persuaded had occurred in the first place), and it denied Sims’ motion for a mistrial.

Sims made a second request for a mistrial based upon the conduct of a member of the jury pool who sua sponte raised his hand, stated that he knew Sims as a former family friend, and announced, “I got to go. I don’t want to be a part of it.” The circuit court dismissed the man and again found no grounds for a mistrial.

We see no arguable basis for a mistrial claim on appeal. The prosecutor's question about taking one person's word over another's was hypothetical in nature and did not actually state that Sims would testify. Any inference that nonetheless might have been drawn that Sims would testify was cured by the circuit court's additional questions and instructions. As to the jury pool member, he did not provide any details about the nature of his prior relationship with Sims that could have prejudiced the jury in any way.

### **Jury Instructions**

The circuit court properly instructed the jury that, in order to obtain a conviction for third-degree sexual assault, the State needed to prove beyond a reasonable doubt: (1) that Sims had sexual intercourse (meaning any intrusion, however slight, of any part of a person's body or of any object into the genital or anal opening of another person) with Kayla; and (2) that Kayla did not consent to have sexual intercourse (meaning that she did not freely agree, regardless of whether she offered physical resistance). *See* WIS. STAT. § 940.225(3)(a); WIS JI—CRIMINAL 1218A. The only objection Sims raised to any of the other jury instructions that were given related to the second-degree sexual assault charge on which he was acquitted, and that instruction had no bearing on his conviction for third-degree sexual assault arising out of a separate incident.

### **Sufficiency of the Evidence**

We review the sufficiency of the evidence to support a criminal conviction by comparing it to the instructions actually given to the jury, so long as those instructions conform to the statutory requirements of the charged offense. *State v. Beamon*, 2013 WI 47, ¶22, 347 Wis. 2d 559, 830 N.W.2d 681. We also consider all of the evidence produced at trial, including evidence

that the defendant challenges as being improperly admitted. *State v. LaCount*, 2007 WI App 116, ¶22, 301 Wis. 2d 472, 732 N.W.2d 29. As we have just explained, the circuit court properly instructed the jury, and the other-acts evidence and expert testimony were properly admitted.

For the purpose of this opinion, we need not set forth all of the evidence produced at Sims' trial, which counsel has adequately discussed in his no-merit report. Consistent with our standard of review, we merely highlight the key evidence supporting the elements of the offense. See *State v. Poellinger*, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990) (stating that the test is whether “the evidence, viewed most favorably to the state and the conviction, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt”); see also WIS. STAT. § 805.15(1).

Kayla testified that she began dating Sims in May 2016 and moved in with him in August 2016. After the two of them moved from Colfax to Menomonie in about February or March of 2017, Kayla noticed that Sims began drinking heavily, and his behavior changed drastically. At times, he would threaten to shoot her, her dogs, or himself, and on at least one occasion, he brandished a firearm while making the threats.

Kayla testified that sometime during the summer of 2018, after Sims had intercourse with her while she was on her hands and knees, Sims “stuck his penis in [her] behind hole” after she had repeatedly told him that she did not want to have anal sex. Kayla told Sims to stop and to take it out because it hurt, and she bled for a few days afterwards. Kayla's testimony about the anal sex incident was sufficient, in and of itself, to satisfy both elements of third-degree sexual assault.

## Sentence

After the jury found Sims guilty of third-degree sexual assault, the circuit court ordered a presentence investigation report (PSI). Prior to the sentencing hearing, the court reviewed the PSI and a victim impact statement. At the hearing, the court heard from both counsel and Sims personally. The court then discussed how factors such as the severity of the offense and Sims' character related to its sentencing objectives of punishment, rehabilitation, and protection of the public. The court viewed the offense as particularly serious due to its violent nature and profound impact upon the victim. It deemed a significant prison term to be necessary for Sims to obtain sex offender treatment in confinement.

The circuit court imposed a bifurcated sentence consisting of three years' initial confinement followed by three years' extended supervision, with various conditions. The court also imposed statutory fees and awarded 350 days of sentence credit, as agreed to by the parties.

The sentence was within the ten-year total amount of imprisonment authorized by statute, and it did not include the additional surcharge Sims would have faced for the overlooked domestic violence allegation. *See* WIS. STAT. §§ 940.225(3) (classifying third-degree sexual assault as a Class G felony); 973.01(2)(b)7 and (d)4 (providing maximum terms of five years' initial confinement and five years' extended supervision for a Class G felony); 973.055 (domestic abuse surcharge).

There is a presumption that a sentence "well within the limits of the maximum sentence" is not unduly harsh, and the sentence imposed here was not "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.” *See State v. Grindemann*, 2002 WI App 106, ¶¶31, 255 Wis. 2d 632, 648 N.W.2d 507 (citations omitted).

### **Assistance of Counsel**

We agree with appellate counsel’s discussion and conclusion that the record does not reveal any basis to challenge Sims’ trial counsel’s performance. *See generally State v. Sholar*, 2018 WI 53, ¶32, 381 Wis. 2d 560, 912 N.W.2d 89 (discussing the standard for claims of ineffective assistance of counsel). In particular, trial counsel was able to obtain exclusion of other-acts evidence, an acquittal on the more serious charge, and a sentence lower than that recommended by the State.

### **Conclusion**

As noted above, the judgment of conviction shall be amended to conform to the verdict by removing the domestic violence designation. Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. *See State v. Allen*, 2010 WI 89, ¶¶81-82, 328 Wis. 2d 1, 786 N.W.2d 124. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

Accordingly,

IT IS ORDERED that the judgment of conviction shall be amended to remove the domestic violence designation. As amended, the judgment of conviction is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Dennis Schertz is relieved of any further representation of Daniel Sims in this matter pursuant to WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*