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May 10, 2017

To:

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

2016AP1801-CRNM State of Wisconsin v. Herman J. Beuth, III (L.C. # 2015CF347)

Before Neubauer, C.J., Gundrum and Hagedorn, JJ.

Herman J. Beuth, III, appeals from a judgment convicting him of (1) causing a child to view or listen to sexual activity, and (2) exposing his genitals to a child. Beuth's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2015-16)¹ and *Anders v.*

¹ All references to the Wisconsin Statutes are to the 2015-16 version.

California, 386 U.S. 738 (1967). Beuth received a copy of the report, was advised of his right to file a response, and has elected not to do so. After reviewing the record and counsel's report, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment. *See* WIS. STAT. RULE 809.21.

Beuth was convicted following a jury trial of (1) causing a child to view or listen to sexual activity; and (2) exposing his genitals to a child. The charges stemmed from allegations that he showed pornographic videos to his then thirteen-year-old daughter and exposed himself to her. For his actions, the circuit court imposed an aggregate sentence of four and one-half years of initial confinement followed by five years of extended supervision. This no-merit appeal follows.

The no-merit report addresses whether the evidence at Beuth's jury trial was sufficient to support his convictions. When reviewing the sufficiency of the evidence, we may not substitute our judgment for that of the jury unless the evidence, viewed most favorably to the State and the convictions, is so lacking in force and probative value that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt. *State v. Poellinger*, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990). Our review of the trial transcripts persuades us that the State produced ample evidence to convict Beuth of his crimes. That evidence included testimony from (1) the victim, who recounted the allegations; (2) the victim's mother, whom the victim had repeatedly tried to text for help around the time of the incident; and (3) a police officer, who took a

statement from Beuth afterwards.² We agree with counsel that any challenge to the sufficiency of the evidence would lack arguable merit.

The no-merit report fails to address whether the circuit court properly exercised its discretion at sentencing.³ Our independent review of the record reveals that the court's sentencing decision had a "rational and explainable basis." *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (citation omitted). In making its decision, the court considered the seriousness of the offenses, Beuth's character, and the need to protect the public. *See State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Under the circumstances of the case, which were aggravated by Beuth's relationship with the victim and his prior criminal record,⁴ the sentence imposed does not "shock public sentiment and violate the judgment of reasonable people concerning what is right and proper." *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). Accordingly, we conclude that a challenge Beuth's sentence would lack arguable merit.

In addition to the foregoing issues, we considered other potential issues that arise in cases tried to a jury, *e.g.*, jury selection, objections during trial, confirmation that the defendant's waiver of the right to testify is valid, use of proper jury instructions, and propriety of opening

² In a Mirandized interview, Beuth acknowledged that he had pornographic DVDs at his residence and had used the victim's computer to view pornographic websites. A search of the victim's computer confirmed that pornographic websites had been visited around the time of the incident.

³ Counsel is obligated to discuss possible appellate issues arising pretrial, at trial, and at sentencing, and state why the issues do not have arguable merit. Future no-merit reports may be rejected if they do fulfill the purpose of WIS. STAT. RULE 809.32.

⁴ Beuth was previously convicted of several crimes, including abduction of a child. He was required to register as a sex offender as a result of that conviction.

statements and closing arguments. Here, the jury was selected in a lawful manner. Objections during trial were properly ruled on. When Beuth elected not to testify, the circuit court conducted a proper colloquy to ensure that his waiver was valid. The jury instructions accurately conveyed the applicable law and burden of proof. No improper arguments were made to the jury during opening statements or closing arguments. Accordingly, we conclude that such issues would lack arguable merit.

Our independent review of the record does not disclose any potentially meritorious issue for appeal. Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report and relieve Attorney Jeffrey J. Guerard of further representation in this matter.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Jeffrey J. Guerard is relieved of further representation of Beuth in this matter.

IT IS FURTHER ORDERED that this summary disposition order will not be published and may not be cited under WIS. STAT. RULE 809.23(3)(b).

Diane M. Fremgen
Clerk of Court of Appeals