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DISTRICT III

December 23, 2025

To:

Hon. Mark J. McGinnis
Circuit Court Judge
Electronic Notice

Megan Elizabeth Lyneis
Electronic Notice

Barb Bocik
Clerk of Circuit Court
Outagamie County Courthouse
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Jesse J. Elst 337221
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P.O. Box 3310
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John Blimling
Electronic Notice

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

2025AP46-CRNM

State of Wisconsin v. Jesse J. Elst (L. C. No. 2021CF1263)

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).

Counsel for Jesse J. Elst has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2023-24),¹ concluding that no grounds exist to challenge Elst's convictions for attempted second-degree sexual assault of a child, use of a computer to facilitate a child sex crime, child enticement, and possession of methamphetamine, all counts as a repeater. Elst was informed of his right to file a response to the no-merit report, but he has not responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we

¹ All references to the Wisconsin Statutes are to the 2023-24 version.

conclude that there is no arguable merit to any issue that could be raised on appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

The charges against Elst arose from allegations that he communicated through digital means with a law enforcement officer who was posing as a 15-year-old girl named “Alexa” over a period of approximately 1 month. The communications included graphic descriptions of various sex acts that Elst wanted to perform on Alexa. Elst arranged to meet up with Alexa in the parking lot of a business across from the high school that Alexa purportedly attended. When Elst arrived at that location at the appointed time, he was placed under arrest. During a search of Elst’s vehicle following his arrest, officers located “a clear colored gem bag containing a small amount of clear/white colored chunky crystalline material,” which field-tested positive for methamphetamine.

Shortly after the charges against Elst were filed, the circuit court ordered a competency examination. The examiner concluded that Elst was not competent to proceed to trial but was likely to be restored to competency within the requisite statutory time period. The parties stipulated that the court could rely on the examiner’s findings and conclusions, and the court entered an order finding Elst incompetent and committing him to the Department of Health Services for treatment. Following treatment, a subsequent examiner found Elst competent to proceed to trial. Neither party contested the examiner’s findings and conclusions, and the court found Elst competent.

A jury trial was scheduled for January 17 and 18, 2023. Thereafter, Elst—although represented by counsel—filed a pro se speedy trial demand. The circuit court did not act on

Elst's pro se submission, noting that Elst's "legal counsel should file something" if Elst wanted earlier dates for his jury trial.

On January 5, 2023, Elst's trial attorney moved for another competency examination, which the circuit court granted, resulting in a delay of Elst's jury trial. The examiner again found that Elst was competent to proceed. Based on the examiner's report, both parties stipulated that Elst was competent to proceed, and the court again found him competent. The case was then scheduled for a jury trial beginning on April 17, 2023. Elst's trial attorney filed a speedy trial demand on April 10, 2023.

Elst's jury trial commenced as scheduled on April 17, 2023. On the morning of the first day of trial, Elst opted to enter a no-contest plea to the charge of possession of methamphetamine, as a repeater, without any plea agreement. Following a plea colloquy, supplemented by a signed plea questionnaire and waiver of rights form, the circuit court accepted Elst's plea, finding that it was made freely, voluntarily, and intelligently. The court further found that the facts alleged in the complaint provided an adequate factual basis for Elst's plea to the methamphetamine possession charge.

The case then proceeded to a jury trial on the three remaining charges.² The State presented testimony from a single witness—the officer who had communicated with Elst while posing as Alexa. Following a colloquy with the circuit court, Elst waived his constitutional right

² Following a colloquy with the circuit court, Elst stipulated that he qualified as a repeater for purposes of the three remaining charges.

to remain silent and chose to testify in his own defense. The jury ultimately found Elst guilty of all three of the remaining charges.

The circuit court ordered a presentence investigation report. At sentencing, after the parties made their sentencing arguments and Elst exercised his right of allocution, the court imposed concurrent sentences on all four counts totaling six years' initial confinement followed by seven years' extended supervision. During its sentencing remarks, the court emphasized Elst's character, including his lengthy criminal record; the seriousness of the offenses; the fact that Elst had committed the offenses while on probation; and the need to protect the public. With the parties' agreement, the court granted Elst 556 days of sentence credit.

The no-merit report addresses: (1) whether the evidence at trial was sufficient to support the jury's verdicts; (2) whether the circuit court erred by giving the jury a curative instruction after evidence was introduced that Elst had refused to provide law enforcement with passcodes for two cell phones following his arrest; (3) whether Elst's no-contest plea to the methamphetamine possession charge was knowing, intelligent, and voluntary; and (4) whether the court erroneously exercised its sentencing discretion. Having independently reviewed the record, we agree with appellate counsel's description, analysis, and conclusion that these potential issues lack arguable merit, and we therefore do not address them further.³

³ Although not addressed in the no-merit report, we note that the circuit court briefly mentioned the COMPAS risk assessment during its sentencing remarks. The court's comments show, however, that COMPAS was not "determinative" of the sentences imposed. *See State v. Loomis*, 2016 WI 68, ¶¶98-99, 371 Wis. 2d 235, 881 N.W.2d 749. Any challenge to Elst's sentences on this basis would therefore lack arguable merit.

The no-merit report does not address whether any issues of arguable merit exist regarding: (1) the circuit court's competency determinations; (2) Elst's speedy trial demands; (3) jury selection; (4) the court's rulings on objections at trial; (5) Elst's waiver of his constitutional right not to testify; (6) the jury instructions; (7) the parties' opening statements and closing arguments; and (8) the court's responses to two questions posed by the jurors during their deliberations. Nevertheless, having independently reviewed the record, we are satisfied that none of these potential issues has arguable merit.

First, any challenge to the circuit court's competency determinations would lack arguable merit. On two occasions, the court properly found Elst competent to proceed based on the court-appointed examiners' reports, after the parties did not dispute the examiners' findings and conclusions. *See WIS. STAT. § 971.14(4)(b).*

Second, Elst's speedy trial demands do not give rise to any issue of arguable merit for appeal. The circuit court properly declined to act on the pro se speedy trial demand that Elst filed while represented by counsel. *See State v. Redmond*, 203 Wis. 2d 13, 19-20, 552 N.W.2d 115 (Ct. App. 1996) (explaining that a defendant may proceed with counsel or pro se, but is not entitled to hybrid representation). Elst's jury trial commenced within 90 days of the subsequent speedy trial demand that his attorney filed on his behalf. *See WIS. STAT. § 971.10(2)(a).*

Third, no errors occurred during jury selection. None of the potential jurors' answers during voir dire gave rise to an arguable basis to remove any potential juror for cause. While the prosecutor raised a concern immediately following voir dire that Elst's leg restraints may have been visible to the potential jurors, the issue was immediately corrected, and there is nothing in the record to indicate that any of the potential jurors actually noticed the leg restraints.

Fourth, the record shows that the circuit court appropriately exercised its discretion when ruling on the parties' objections at trial. Fifth, the court conducted an appropriate colloquy with Elst regarding his waiver of his constitutional right not to testify. Sixth, the jury instructions accurately conveyed the applicable law and burden of proof. Seventh, nothing improper occurred during the parties' opening statements or closing arguments.

Eighth, the circuit court did not erroneously exercise its discretion when responding to two questions posed by the jurors during their deliberations. Initially, the jurors noted a discrepancy between the offense date stated in the information—December 3, 2021—and the date when Elst was arrested after arranging to meet with Alexa—December 14, 2021. With the parties' agreement, the court instructed the jury that the date alleged in the information was a “mistake” and that it was “not being alleged that [Elst] did anything illegal … any other day other than December 14th.” The jurors then asked to review all of the electronic communications between Elst and Alexa, a paper copy of which had been introduced into evidence as Exhibit 1, “[t]o piece together a chain of events.” With the parties' agreement, the court sent Exhibit 1 to the jury, with the exception of two pages that pertained to communications from a third cell phone that was not discussed during the trial testimony. There would be no arguable merit to a claim that the court erroneously exercised its discretion when responding to the jurors' questions.

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

Therefore,

IT IS ORDERED that the judgment is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Megan Elizabeth Lyneis is relieved of further representation of Jesse J. Elst in this matter. *See* WIS. STAT. RULE 809.32(3).

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

Samuel A. Christensen
Clerk of Court of Appeals