



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215

P.O. BOX 1688

MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880

TTY: (800) 947-3529

Facsimile (608) 267-0640

Web Site: www.wicourts.gov

DISTRICT III

April 25, 2018

To:

Hon. Jay R. Tlusty
Circuit Court Judge
Lincoln County Courthouse
1110 E. Main Street
Merrill, WI 54452

Marilyn Baraniak
Clerk of Circuit Court
Langlade County Courthouse
800 Clermont Street
Antigo, WI 54409

Patricia A. FitzGerald
Patricia A. FitzGerald Law Office
229 N. Grove St.
Mt. Horeb, WI 53572-1615

Elizabeth R. Gerbert
District Attorney
800 Clermont Street
Antigo, WI 54409

Criminal Appeals Unit
Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

Carissa L. Drake 642950
Taycheedah Corr. Inst.
P.O. Box 3100
Fond du Lac, WI 54936-3100

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

2017AP54-CRNM State of Wisconsin v. Carissa L. Drake (L. C. No. 2015CF42)

Before Stark, P.J., Hruz and Seidl, 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 Carissa Drake has filed a no-merit report concluding there is no basis to challenge Drake's convictions, following a jury trial, for second-degree sexual assault of a child and obstructing an officer. Drake was advised of her right to respond and has not responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738

(1967), we conclude there is no merit to any issue that could be raised on appeal and summarily affirm. *See* WIS. STAT. RULE 809.21 (2015-16).¹

This case stems from allegations that Drake engaged in sexual activity with two minors at an underage drinking party hosted at her residence in Antigo. A second amended Information charged Drake with two counts of sexual assault of a child under sixteen years of age, and one count of obstructing an officer. The jury found Drake guilty of one count of sexual assault of a child and the obstructing charge. The circuit court imposed a sentence on the sexual assault charge of six years' initial confinement and six years' extended supervision; and, on the obstruction charge, of five months' time served jail sentence.

The no-merit report addresses the sufficiency of the evidence concerning the sexual assault charge;² whether any suppression issues should have been raised; whether there were any erroneous rulings on motions; and whether the sentences were the result of an erroneous exercise of discretion or unduly harsh or excessive. This court is satisfied that the no-merit report properly analyzes the issues raised, and this court will not discuss them further.

The no-merit report does not analyze whether an arguable issue of merit arises regarding Drake's decision to testify at trial. However, our independent review of the record discloses that

¹ References to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

² The no-merit report states that the only conviction Drake intended to appeal was the second-degree sexual assault. Drake did not respond to the no-merit report and, therefore, we will not further address the issue of the sufficiency of the evidence for the obstruction of justice charge. *See Charolais Breeding Ranches, Ltd. v. FPC Sec. Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979). In any event, a strategic decision was made at trial to admit to the charge of obstructing an officer, but deny the sexual assaults. In that regard, Drake admitted at trial that she initially lied to police when she told them she did not allow underage persons to drink at her home.

prior to the defense's case the circuit court inquired outside the presence of the jury into Drake's understanding of both the right to testify and the right not to testify. That inquiry was done in a manner like that suggested in the special materials prepared by the Wisconsin Criminal Jury Instructions Committee in WIS JI—CRIMINAL SM 28 (2012). See *State v. Denson*, 2011 WI 70, ¶67, 335 Wis. 2d 681, 799 N.W.2d 831. The record also demonstrates that Drake discussed with her trial counsel the decision whether to testify. The court appropriately concluded that Drake knowingly, voluntarily, and intelligently exercised her right to testify at trial, and no arguable issue of merit appears for appeal.

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 Patricia FitzGerald is relieved of further representing Drake in this matter. See WIS. STAT. RULE 809.32(3).

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

Sheila T. Reiff
Clerk of Court of Appeals