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DISTRICT I

January 28, 2025

To:

Hon. Stephanie Rothstein
Reserve Judge

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Travis Amaja Onyemachi 471427
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Angela Conrad Kachelski
Electronic Notice

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

2023AP2071-CRNM State of Wisconsin v. Travis Amaja Onyemachi
(L.C. # 2019CF5698)

Before Donald, P.J., Geenen and Colón, 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).

Travis Amaja Onyemachi appeals his judgment of conviction for second-degree sexual assault of a child under the age of sixteen, and two counts of felony bail jumping. His appellate counsel, Angela Conrad Kachelski, has filed a no-merit report pursuant to ***Anders v. California***, 386 U.S. 738 (1967) and WIS. STAT. RULE 809.32 (2021-22).[1] Onyemachi received a copy of the report and filed two responses, and counsel filed a supplemental report. Upon this court's independent review of the record as mandated by ***Anders***, counsel's reports, and Onyemachi's

[1] All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

responses, we conclude there are no issues of arguable merit that could be pursued on appeal. We therefore summarily affirm.

The charges against Onyemachi stem from three incidents involving the victim, I.G. In March 2019, Onyemachi had an active warrant for a probation violation. Police officers observed Onyemachi in a parked vehicle on North 68th Street in Milwaukee. The officers made contact and ordered Onyemachi to exit the vehicle. He was taken into custody.

There was a female in the front passenger seat of the vehicle, later identified as I.G. She had a coat on her lap, and the officers discovered she had no clothes on from the waist down. I.G. indicated that Onyemachi was her boyfriend, and initially lied about her date of birth, claiming to be an adult; she was actually fourteen years old at the time, while Onyemachi was thirty years old. I.G. also denied having any sexual contact with Onyemachi, stating that her pants were off because she was just about to urinate in the alley when the police arrived. She was taken to the Child Advocacy Center for a sexual assault examination.

From I.G.'s examination, semen was discovered both in and around I.G.'s vagina. The DNA matched Onyemachi. Onyemachi was charged in December 2019 with second-degree sexual assault of a child under the age of sixteen.

Onyemachi was released on cash bail in June 2020. One of the conditions of bail was no contact with I.G. Onyemachi failed to appear for a hearing in October 2020, and a bench warrant was issued.

Onyemachi was found in Texas, with I.G. He was subsequently extradited back to Milwaukee and charged with two counts of felony bail jumping, based on the condition of his bail that prohibited him from having contact with I.G.

The State moved to join the two cases. Onyemachi objected on grounds that joinder would be unduly prejudicial. The trial court ruled that joinder was appropriate, given that the cases involved the same victim—I.G.—and that the evidence in the two cases overlapped, due to the bail jumping charges being the result of the no-contact order imposed from the sexual assault charge. The court therefore granted the motion for joinder.

The trial court also addressed a motion from Onyemachi to exclude the DNA evidence, on the grounds that the State's notice of intent to use the evidence was not timely filed pursuant to WIS. STAT. § 971.23(9)(b). The court observed that the State's notice was filed four days after the statutory deadline requiring that notice be provided at least forty-five days prior to the trial date, which at that point was scheduled for January 3, 2022.[2] *See* ***id.*** However, the court noted that the DNA evidence the State sought to introduce was set forth in the criminal complaint. The court further pointed out that the report from the crime lab regarding the DNA evidence was included in the discovery provided to the defense. As such, the court found that the notice provisions of the statute were satisfied such that the underlying due process obligations of the statute had been met, and therefore there was good cause to waive the requirement. *See* § 971.23(9)(c). As a result, the court denied Onyemachi's motion to exclude the DNA evidence.

[2] The trial was subsequently rescheduled to March 14, 2022, after Onyemachi and his trial counsel were unable to enter the Milwaukee County Courthouse on January 3, 2022, due to COVID-19 protocols.

Shortly before the trial was to begin, Onyemachi's trial counsel filed a motion to withdraw, at Onyemachi's request. At a hearing on the motion, Onyemachi explained that he had "a long list of things" that counsel was not doing, such as filing motions he suggested. The trial court explained the duties of counsel, stating that counsel "can't just always do what you demand." In addition to noting the vagueness of Onyemachi's allegations against counsel, the court observed the age of the cases at that point and that Onyemachi had renewed his speedy trial demand, noting that getting new counsel appointed would further delay the trial. The court therefore denied the motion.

On the first morning of the trial, the trial court addressed a letter filed by counsel that Onyemachi was renewing his request for new counsel and withdrawing his speedy trial demand. The court attempted to question Onyemachi about this, but Onyemachi was uncooperative and disruptive by repeatedly interrupting the court and objecting that it lacked jurisdiction, citing to the Uniform Commercial Code and demanding to be addressed as "Secured Party," and eventually turning his back to the court, refusing to respond.

The trial court found that Onyemachi's conduct was designed to delay the trial. It concluded that Onyemachi had asserted his right to counsel, as opposed to expressing a desire to proceed *pro se*. The trial proceeded.

I.G. testified. With regard to the incident where she was found in Onyemachi's vehicle with no pants on, she again stated that her pants were off because she was going to urinate in the alley. She denied having sexual contact with Onyemachi, although she had previously told officers that she had hand-to-penis contact with him that day. She admitted that she sometimes had sexual contact with people in exchange for money or marijuana. In response to a question

from the State regarding the presence of Onyemachi's DNA in her vagina, I.G. stated that she had put a bag of drugs into her vagina when the police arrived, and that the bag had probably also been inside of Onyemachi's girlfriend.

With regard to being found with Onyemachi in Texas, I.G. testified that she was working as a prostitute down there for a man named Wolf. She stated that Wolf had harmed her, so her family paid Onyemachi to drive to Texas to bring her home.

Other witnesses for the State included the Milwaukee officers who discovered Onyemachi and I.G. in the alley; officers from Texas who had contact with Onyemachi and I.G. there; the employee from the State Crime Lab who examined the DNA samples obtained from I.G. and Onyemachi; and the pediatric nurse who performed the sexual assault examination of I.G. Additionally, the director of the Human Trafficking Bureau of the Wisconsin Department of Justice testified. He stated that he was familiar with I.G. at the time she was found in the alley with Onyemachi, as she was a victim in a human trafficking investigation he was conducting.

At the end of the third day of trial, the State informed the trial court that it had received information that Onyemachi was making calls to I.G. from the jail. After reviewing records of all of the calls that had been made from the jail to I.G.'s cell number, the State discovered that 569 calls had been made to I.G. by Onyemachi since he had been in custody.

The State explained that in four recent calls, Onyemachi was discussing the case and trial with I.G., "coaching" her on how to testify. The State asserted that these discussions were reflected in I.G.'s testimony at trial. The State sought to enter the calls into evidence.

Counsel for Onyemachi listened to those calls. He moved to withdraw and for a mistrial based on disparaging remarks about counsel that Onyemachi made about him during those calls. Counsel asserted that there could be an argument made after trial that he had a conflict of interest due to those remarks. Counsel also argued against admitting the phone calls due to prejudice, because the jury would be aware that Onyemachi was in custody, and because the calls might confuse the jury about the bail jumping charges, since those charges were based on Onyemachi's contact with I.G. despite the no-contact order. Counsel further noted that Onyemachi had made disparaging remarks about the judge as well as some of the jurors on the calls. He argued they should not be admitted due to lack of relevance, and because they could "inflame the [jury members] passions" against Onyemachi.

The trial court listened to the four calls. The court noted that in addition to Onyemachi's efforts to influence I.G.'s testimony, he also stated on the calls his intention to cause a mistrial. The court ultimately found that the recorded calls were admissible, but redacted portions of the calls, as agreed upon by the parties. The court also rejected counsel's motion to withdraw and for a mistrial, observing that counsel was an experienced attorney, and the record reflected that counsel had continued to effectively represent Onyemachi after the calls and their content had come to light. The court therefore concluded that the remarks by Onyemachi did not "rise to the level of necessitating removal of counsel."

The trial proceeded, with Onyemachi testifying in his own defense. He denied having sexual contact with I.G., stating that he just knew her from the neighborhood and would provide her with rides as the "hood Uber driver." He said she had told him she was nineteen years old, and that he did not know her true age at the time. He echoed I.G.'s testimony that his DNA must have come from "the bag of drugs she stuffed inside herself when the police arrived" or "pillows

that she was sitting on." He also denied knowing about the no-contact order with I.G. when he went to pick her up in Texas. Regarding his calls to I.G. from jail, Onyemachi testified that he was "just going over the case" with I.G. because the incidents had occurred several years ago by that time, and he was providing her with "updates."

After deliberating for approximately an hour, the jury found Onyemachi guilty as charged. The trial court imposed sentences totaling twenty-six years of initial confinement and twenty-one years of extended supervision.[3] This no-merit appeal follows.

Pretrial Proceedings

The no-merit report discusses in detail several pretrial rulings made in this matter. First, regarding the State's motion for joinder, appellate counsel observes that these offenses meet the criteria for joinder pursuant to WIS. STAT. § 971.12(1) (2019-20) (offenses may be tried together if they are "of the same or similar character or are based on the same act or transaction or on [two] or more acts or transactions connected together or constituting parts of a common scheme or plan"). Given the manner in which the offenses are "connected together" by the victim, I.G., counsel concludes that a claim challenging the trial court's decision to join these cases would lack arguable merit. *See* ***id.***

[3] The judgment of conviction was amended in September 2022. The initial judgment indicated that the sentences for the bail jumping charges were concurrent, but the sentencing transcript reflects that the trial court intended for them to be consecutive. In his responses, Onyemachi points out that in the no-merit report, appellate counsel cited the sentences set forth in the initial judgment of conviction; counsel conceded the error in the supplemental no-merit report.

In his responses, Onyemachi asserts that joinder was not proper. However, we agree with appellate counsel that based on the facts of the underlying offenses, there would be no arguable merit to a challenge of the trial court's decision to join the cases.

The next pretrial ruling addressed in the no-merit report is Onyemachi's motion to exclude the DNA evidence. The trial court found that although the State filed its notice four days after the statutory deadline based on the trial date set at that time, notice of the evidence had been provided to the defense in the complaint and in discovery. It therefore determined there was good cause to waive the requirement. *See* WIS. STAT. § 971.23(9)(c). Furthermore, appellate counsel points out that the trial was subsequently rescheduled for March 15, 2022; as such, the State's notice was filed more than the requisite forty-five days before the actual trial date. Onyemachi asserts in his responses that there is nevertheless a meritorious claim of error by the trial court. However, we agree with appellate counsel's assessment that there would be no merit to an argument challenging this ruling.

The final pretrial ruling discussed in the no-merit report is the trial court's denial of counsel's motion to withdraw. The trial court denied the motion based on the vagueness of Onyemachi's allegations against trial counsel, the age of the case, and the pending speedy trial demand. *See* ***State v. Cummings***, 199 Wis. 2d 721, 748-50, 546 N.W.2d 406 (1996) (the trial court's decision on a motion to withdraw is a discretionary decision that "should also consider the 'avoidance of delay or dilatory tactics' when deciding whether to allow withdrawal" (citation omitted)). Appellate counsel concludes that there again would be no merit to an argument challenging this discretionary decision.

As he did at the hearing on this motion, Onyemachi contends in his responses that the motion should have been granted because his trial counsel refused to "work with [him]" or "put in motions." Onyemachi also contends that his renewed motion for the withdrawal of his trial counsel on the first morning of trial should have been granted. However, based on the record, as described above, we agree with appellate counsel's assessment that there would be no merit to such a claim.

In sum, we agree with counsel's overall conclusion that there are no issues of arguable merit relating to the pretrial proceedings.

Jury Trial

Next, the no-merit report discusses the trial. The report reviews jury selection, the jury instructions provided, opening statements, Onyemachi's waiver of his right not to testify, the trial court's response to objections made at trial, closing arguments, and the verdicts. The report also notes that the State filed an amended information during the trial to consolidate the three counts against Onyemachi since the cases had been joined, at the request of the trial court. Appellate counsel concludes there are no issues of arguable merit from these proceedings.

Onyemachi asserts in his response that his trial counsel "refused" to allow him to participate in jury selection. Appellate counsel represents that she discussed this claim with trial counsel, and that his notes indicate that Onyemachi refused to talk to him or answer his questions during jury selection, and that he was being "willfully disruptive of the process." We observe that Onyemachi's conduct that morning, as described above, is reflected in the record.

The no-merit report also addresses the admission of the jail calls into evidence. Onyemachi argues that the calls were irrelevant and should not have been admitted. However, trial courts have "broad discretion to admit or exclude evidence and to control the order and presentation of evidence at trial," and this court will "upset their decisions only where they have erroneously exercised that discretion." ***State v. James***, 2005 WI App 188, ¶8, 285 Wis. 2d 783, 703 N.W.2d 727. As previously discussed, the record reflects that the trial court found the call recordings relevant and admissible, *see* WIS. STAT. §§ 904.01 and 904.02, redacting certain portions that might have caused undue prejudice, *see* § 904.03. Appellate counsel concluded there were no issues of arguable merit relating to that ruling, and we agree.

The no-merit report also addresses the sufficiency of the evidence. It details the evidence that was presented, and sets forth the applicable standard of review. *See* ***State v. Poellinger***, 153 Wis. 2d 493, 503, 451 N.W.2d 752 (1990). Appellate counsel concludes that the evidence was sufficient for the jury to find Onyemachi guilty of all three counts, and that there would be no arguable merit to a claim challenging the sufficiency of the evidence.

Onyemachi raises issues discounting the testimony of the State's witnesses while focusing on I.G.'s testimony, noting that she testified that they never had sexual contact. It is up to the jury to assess witness credibility and resolve any conflicts in the testimony. ***Id.*** We agree with counsel's assessment that there are no issues of arguable merit relating to the trial and the sufficiency of the evidence.

Sentencing

The no-merit report discusses the trial court's exercise of its discretion during sentencing. The record reflects that the trial court considered relevant sentencing objectives and factors. *See*

State v. Gallion, 2004 WI 42, ¶¶17, 40, 270 Wis. 2d 535, 678 N.W.2d 197; ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The sentences imposed are within the statutory maximums, and are thus presumed not to be unduly harsh or unconscionable. *See* ***State v. Grindemann***, 2002 WI App 106, ¶32, 255 Wis. 2d 632, 648 N.W.2d 507.

In his responses, Onyemachi states that the trial court was biased against him during sentencing due to his disrespectful conduct on the first day of trial, and his disparaging remarks in the recorded jail calls. As stated above, the trial court based its sentences on proper factors, and there is no evidence of any bias in the record.

Onyemachi also asserts that his sentences were based on inaccurate information. He contends that the trial court referenced the wrong age for I.G., stating that she was thirteen years old when he met her, rather than fourteen. He also asserts that the trial court misspoke about the nature of one of his fifteen prior convictions.

To establish a claim sufficient to warrant resentencing, a defendant must show that there was information "before the sentencing court that was inaccurate," and that the court "actually relied on the inaccurate information." ***State v. Tiepelman***, 2006 WI 66, ¶31, 291 Wis. 2d 179, 717 N.W.2d 1. To establish actual reliance, it should be demonstrated that the trial court at sentencing gave "explicit attention" or "specific consideration" to the inaccurate information. *See* ***id.***, ¶14 (citation omitted). In the context of the sentencing hearing, the trial court did not give these inaccuracies explicit attention or specific consideration; rather, the court was simply making the point that Onyemachi had sexual contact with an underage girl, and had an extensive criminal history.

Additionally, Onyemachi argues that the joinder of the cases and the amended information resulted in his ineligibility for earned release programs. However, program eligibility is a discretionary decision of the trial court. ***State v. Owens***, 2006 WI App 75, ¶7, 291 Wis. 2d 229, 713 N.W.2d 187. Although the trial court could have made Onyemachi eligible for the challenge incarceration program on the sexual assault count and for both earned release programs on the bail jumping counts, *see* WIS. STAT. § 973.01(3g)-(3m), it chose not to. Instead, the court cited the need for a "lengthy period" of confinement to ensure that Onyemachi gets the "rehabilitative help" that he needs.

Also with regard to his sentencing, Onyemachi asserts that the trial court was not informed of his cooperation with law enforcement in the prosecution of Deondre Lamont Alston. Trial counsel told appellate counsel that he set up a meeting for Onyemachi with detectives regarding information Onyemachi claimed to have relating to that prosecution. However, the State did not call Onyemachi to testify in Alston's trial as it did not find his information significant.

In short, we agree with appellate counsel's conclusion that there would be no arguable merit to a challenge of Onyemachi's sentences.

Ineffective Assistance of Counsel

Onyemachi raises several other claims in his responses suggesting that his trial counsel was ineffective. He asserts that trial counsel did not inform him of plea offers presented by the State. However, appellate counsel discussed this claim with trial counsel; he provided notes regarding his presentation of the offers to Onyemachi, who rejected them.

Onyemachi also contends that counsel "did not have a defense for trial," failed to provide him with his discovery, and "failed to add people" to the defense list of witnesses. However, the record reflects that counsel presented the defense that Onyemachi did not have sexual contact with I.G. Additionally, appellate counsel represents that Onyemachi was provided with his discovery prior to trial. Furthermore, when appellate counsel asked Onyemachi about his claim regarding additional potential witnesses, he did not provide any names or other information on those purported witnesses.

Onyemachi also claims that trial counsel "withheld evidence" from the trial court regarding "recorded calls" between counsel and I.G. Trial counsel told appellate counsel that I.G. called him twice, stating that she was interested in helping Onyemachi. Neither call was recorded. Furthermore, the record reflects that I.G. did in fact testify that she had no sexual contact with Onyemachi; it was then up to the jury to assess the credibility of her testimony. *See* ***Poellinger***, 153 Wis. 2d at 503. We therefore agree with appellate counsel's assessment that there is no basis for any meritorious ineffective assistance of counsel claims.

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

For all the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Angela Conrad Kachelski is relieved of further representation of Onyemachi 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