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DISTRICT II

March 5, 2025

To:

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Circuit Court Judge
Electronic Notice

Monica Paz
Clerk of Circuit Court
Waukesha County Courthouse
Electronic Notice

Michael S. Holzman
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Javeonta S. Brown #717844
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Waupun, WI 53963-0900

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

2024AP1475-CRNM State of Wisconsin v. Javeonta S. Brown (L.C. #2021CF640)

Before Gundrum, P.J., Grogan and Lazar, 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).

Javeonta S. Brown appeals from a judgment of conviction for second-degree sexual assault entered after a jury found him guilty following a two-day trial. His appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2023-24)¹ and *Anders v. California*, 386 U.S. 738 (1967). Brown was sent a copy of the report and advised of his right to file a response—he has not done so. Upon consideration of the report and an independent review of

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

the record, we conclude there are no issues with arguable merit for appeal. We summarily affirm. *See* WIS. STAT. RULE 809.21.

Following a jury trial, Brown was convicted of second-degree sexual assault for having forcible sexual contact with one of his classmates at a house party. The jury acquitted Brown of a second count of second-degree sexual assault involving another classmate. The trial court sentenced Brown to seven years' total imprisonment, comprised of two years of initial confinement and five years of extended supervision. This no-merit appeal follows.

The no-merit report addresses the following issues: (1) whether the State produced sufficient evidence of Brown's guilt; (2) whether any of the trial court's rulings at Brown's trial amounted to reversible error; and (3) whether the court erroneously exercised its discretion in sentencing Brown, including whether the sentence was excessive. We address each issue in turn below.

The no-merit report discusses whether the evidence at Brown's jury trial was sufficient to support his conviction. 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 conviction, is so lacking in probative value and force 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 Brown of second-degree sexual assault. That evidence included testimony from the victim, the victim's mother, from members of law enforcement who investigated the events at issue in Brown's trial, and from several of the partygoers regarding both Brown's and the victim's behavior in the time surrounding the sexual assault. There were

also several demonstrative exhibits accepted into evidence. Additionally, there was documentary evidence obtained from an alleged victim's cell phone that further supported the jury's finding of Brown's guilt. We agree with counsel that a challenge to the sufficiency of the evidence would lack arguable merit.

The no-merit report also addresses whether there would be any arguable merit to a challenge to any of the trial court's rulings during the trial. Based on counsel's examination of every phase of the trial, the report concludes that there were no instances of the court making an erroneous ruling over Brown's objection that would support an appeal, *see* WIS. STAT. § 901.03. Counsel provides one specific example where the court allowed testimony regarding one of the victim's disclosures of the sexual assault over Brown's objection that it should be excluded under the hearsay rule. We agree with counsel that the court did not erroneously allow this testimony because it clearly fits within the "excited utterance" exception to the hearsay rule. *See* WIS. STAT. § 908.03(2). Our independent review of the trial transcripts confirms that there were no instances of plain error at any phase of the trial that would support an appeal. This court is satisfied that the no-merit report correctly analyzes the issues it raises regarding the court's rulings as without merit, and we will not discuss them further.

There also is no arguable merit to a claim that the trial court improperly exercised its sentencing discretion. In imposing sentence, the court considered the seriousness of the offenses, Brown's character, and the need to protect the public. *See State v. Gallion*, 2004 WI 42, ¶¶40-44, 270 Wis. 2d 535, 678 N.W.2d 197. Several community members and relatives of Brown spoke on Brown's behalf at the sentencing hearing. Brown also had the opportunity to address the court directly, and did so prior to the court's imposition of sentence. The court further considered a letter from Brown to the court.

In addition, where Brown faced a total of twenty-five years of initial confinement and fifteen years of extended supervision, *see* WIS. STAT. § 973.01(2)(b)3. and (d)2., a sentence of two years of initial confinement with five years of supervision, in which the trial court considered both aggravating and mitigating factors, is not disproportionate or shocking. *See State v. Daniels*, 117 Wis 2d 9, 22, 343 NW2d 411 (Ct. App. 1983). Under the circumstances, it cannot reasonably be argued that Brown’s sentence is so excessive as to shock public sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Finally, our independent review of the record—including jury selection, jury instructions, the colloquy surrounding Brown’s decision to exercise his right to not testify, opening statements, and closing arguments—does not disclose any potentially meritorious issue for appeal. *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. 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 Michael S. Holzman of further representation in this matter.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Michael S. Holzman is relieved from further representing Javeonta S. Brown in this appeal.

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

Samuel A. Christensen
Clerk of Court of Appeals