

STATE OF WISCONSIN

SUPREME COURT

CASE NO. 16CF201

APPEAL NO. 20AP1083-CR

FILED

OCT 01 2021

CLERK OF SUPREME COURT  
OF WISCONSIN

STATE OF WISCONSIN

Plaintiff-Respondent,

v.

JEFFREY R. FROEMEL

Defendant - Appellant

(PETITION FOR REVIEW)

FROM APPEAL ORDER OF WISCONSIN COURT OF APPEALS

DENYING DEFENDANT-APPELLANT'S BRIEF AND APPEALS

RELATED TO THE DECISION OF THE CIRCUIT COURT FOR

SAWYER COUNTY THE HONORABLE JUDGE JOHN M. YACKEL, PRESIDING

BRIEF AND APPELLANT OF

DEFENDANT - APPELLANT

JEFFREY R. FROEMEL

Waupun Correctional Institution

P.O. Box 351

Waupun, WI 53963

## PETITION FOR REVIEW

Defendant Jeffrey B. Froemel hereby petitions the Supreme Court of the state of Wisconsin, pursuant to Wis. Stat. 808.10 and Wis. Stat. (Rule) 809.62 to review the decision or order of the Court of Appeals, District 3 in Case No. 16CF201 and Appeal No. 20AP1083CR and order was file by Wisconsin Court of Appeals on August 31, 2021

## ISSUES PRESENTED FOR REVIEW

1. Did the Wisconsin Court of Appeals over look the Circuit Court sentencing discretion.

## (Supreme Court should Grant Review)

To determine if Mr Froemel Constitutions rights was over look, And if the Supreme Court need to guide the lower Courts to lesser sentence in the case like Mr. Froemel, ultimately the Supreme Court can decide if Mr. Froemel case warrent review. And if lower Courts made any errors that could give Mr Froemel any relief.

## (STATEMENT OF THE CASE)

On August 31, 2021 Wisconsin Court of Appeals Denied Mr Froemel appeal and affirm with Sawyer County Circuit Court, On August 23, 2018 the defendant, Jeffrey Froemel, appeared before that branch of the Circuit Court for Sawyer County presided over by the Honorable John M. Yachel for a trial by jury on a complaint charging him with one count of Repeated Sexual Assault of Same child (3 or more 1st degree acts), a violation of Wisconsin state statutes section 948.025 (1)(d) and one count of child enticement section 948.07 (1). On August 23, 2018, the jury

returned verdicts of guilty as to both charges. On October 25, 2018, Jeffrey Froemel, appeared before the Circuit Court for Sawyer County Judge John M. Yackel Presiding for sentencing. The Court imposed a bifurcated sentence of 40 years initial confinement and 20 year extended supervision in connection with the Repeated Sexual Assault Count, and 15 years initial confinement and 10 years extended supervision in connection with the child enticement Count. The court ordered that these sentences be served concurrent to each other. See sentencing transcript page 5 line 8. Defendant Jeffrey R. Froemel is currently incarcerated at Waupun Correctional Institution in Waupun Wisconsin. Mr Froemel brought his Appeal before the Wisconsin Court of Appeals Supporting brief Pursuant to Wisconsin state statute 809.30(2)(A) which was denied by Wisconsin Court of Appeals on August 31, 2021

### (ARGUMENT)

1. The trial court judge erroneously exercised his discretion by imposing an excessive sentence where the circuit Court's sentencing remarks show that the court at the time of sentencing relied on testimony, and inferences from that testimony, that the record shows did not actually occur.

As noted in the defendant's brief- in at sentencing the Court discussed Ms. B's alleged reply to a question on cross-examination, this substantially took the form of the following exchange " why didn't you come forward earlier? Why is it just now?" And I think her response, and I'm paraphrasing, was basically I have grown up. I understand what happened now

and I know that it's wrong so I came forward." "But that struck me at the trial that Ms. D basically gave what I thought was a credible, solid explanation as to why you have a child subjected to this who doesn't say anything, who "denies" it when questioned. And then all of a sudden as she gets older and becomes more self aware as to what happened and what her place is in this world is, can understand more and be able to express what took place."

As also noted in the defendant Mr Froemel brief, the exchange that the court so vividly recalled simply did not happen. The question that the court recalled was not asked. The answer that the court so vividly described was not the answer that was given. These are facts which the post-conviction court's burnishing of it's recollection with matters outside the record such as "the inflection, the emotion, the look in her eye" cannot change. The question at trial, as asked and as answered, referred solely to the degree of detail in the alleged victim's description of events. That was it. That was all. To the extent that counsel was attacking the witness' credibility, it was by drawing attention to the pronounced difference in the way that her description of these events at trial was far more detailed than any prior statement that she had ever given. The alleged victim's answer was addressed to this question and this question only. At no time did trial counsel suggest, in the actual testimony at trial, that the alleged victim had, through a lack of maturity or any other factor, delayed reporting the incident. Counsel's questions may have suggested that the alleged victim was embellishing the account for presentation to the jury.

IF so, that can hardly be argued to have been inappropriate cross-examination. There is, obviously, nothing improper about suggesting that a witness whose testimony becomes more detailed over the passage of time is engaged, deliberately or not, in embellishment and that the testimony is suspect as a result. This is an inference which both the State and the Defense often ask the jury to draw in such cases. There was, however, nothing in this particular exchange between the alleged victim and Counsel that asked, as the Court remembered it being asked, "why didn't you come forward earlier? why is it just now?" There was, however, nothing in this exchange between the alleged victim and counsel that in any way, shape or form could be said to constitute "a credible, solid explanation as to why you have a child subjected to this who doesn't say anything, who denies it when questioned." There was, however, nothing in this exchange between the alleged victim and Counsel that in any way described a process of maturation in which "all of a sudden as she gets older and becomes more self aware as to what happened and what her place in this world is, can understand more and be able to express what took place". Under no conceivable set of circumstances can a demand for an explanation for a delay in reporting be reasonably inferred from a question which does no such thing. Under no conceivable set of circumstances can an explanation for a delay in reporting be reasonably inferred from an answer that proffers nothing more than an explanation for an increased facility with words.

The issue here is not, regardless of how the Court of Appeals wished to frame it, one of the court doing nothing more than relying on permissible inferences at the time of sentencing. It is axiomatic that the court is allowed to do so,<sup>1</sup> and the defendant - our Froemel is not arguing otherwise. But that is not what happened here. When the court quoted the question, when the court quoted the answer, when the court elaborated upon the real meaning of the question that it remembered, that answer that it remembered, and that testimony that it remembered, it left mere inference far behind. This is a case in which the sentencing court's recollection of specific testimony, through, perhaps embellishment of its own, was incorrect. The alleged victim was not asked the question that the court remembered. She did not give the answer that the court remembered her giving, in the context that the court remembered it. The testimony and the inferences from it that the court remembered, that vividly described both at sentencing and during the post-conviction hearing, which it described as "burned in the court's brain" and on which it certainly relied in imposing sentence, simply did not occur anywhere except in the mind of the sentencing court judge. A defendant has an inarguable due process right to be sentenced on the basis of true and correct information. The right to true and correct information must extend to true and correct information about what was said at trial, and the context in which those statements were made. Human recollection is fallible. Human memory is

fallible. That, at its root, is why there is a transcript of these proceedings instead of some kind of mutually agreed upon statement of the evidence. That transcript, in this case shows that the alleged victim was not asked the question that the court remembered and did not give the answer that the court remembered her giving, in the context that the court remembered it. The fact that the court relied on evidence that is unsupported by the record in this case is conceded for all intents and purposes by the court's reference to its ability, even at this late stage, to recall matters outside the record such as "the inflection, the emotion, the look in her eye." The court's reliance on evidence that is unsupported by the record in this case was an erroneous exercise of discretion that entitles the defendant to resentencing.

### (CONCLUSION)

For all of the above reasons Mr Froemel request that this higher Court enter an order remanding this matter for resentencing. WITH THE HELP OF A JAIL HOUSE LAWYER

Defendant Signatures: Jeff Froemel Dated: 9-27-21

JEFFRE R FROEMEL 156494

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(7)

## CERTIFICATION

I JEFFREY R. FROEMEL hereby certify that this brief conforms to the rules contained in sec. 809.19(8)(b) and (c) for a brief and appendix produced with a proportionally spaced font. The length of the brief is 1,040 words

Defendant signature: Jeff Froemel

Dated: 9-27-21

## CERTIFICATE OF COMPLIANCE

WITH WIS. STAT. (RULE) 809.19(12)

I Jeffrey R. FROEMEL hereby certify that I have submitted copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. (Rule) 809.19(12).

I further certify that this brief is identical in content and format to the printed form of the filed as of this date.

A copy of this certificate has been served with the paper copies filed and mail to all parties including the Wisconsin Supreme Court on this Date: September 27, 2021 using Waupun Correctional Prison Mailing system.

Signature: Jeff Froemel Date: 9-27-21

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