

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

December 17, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-2094-CR-NM

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

State of Wisconsin,

Plaintiff-Respondent,

v.

Larry S. Johnson,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Milwaukee County: PATRICIA D. McMAHON, Judge. *Affirmed.*

Before Fine, Schudson and Curley, JJ.

PER CURIAM. A jury found Larry S. Johnson guilty of four counts of second-degree sexual assault of a child under the age of sixteen, in violation of § 948.02(2), STATS. The trial court sentenced Johnson to two concurrent prison terms of eighty-four months. The court also imposed and stayed two ten-year prison terms that were concurrent with each other and consecutive to the other sentences. Johnson was placed on probation for six

years for the latter two counts. Johnson was also ordered to obtain sexual offender treatment, to have no contact with the victim, and to pay an undetermined amount of costs, surcharges, and restitution. He received credit for one day of presentence incarceration.

The state public defender appointed Michael D. Orzel to represent Johnson on appeal. Orzel has filed a no merit report pursuant to RULE 809.32, STATS. and *Anders v. California*, 386 U.S. 738 (1967). Johnson received a copy of the no merit report and was advised of his right to file a response. He has filed a response.

The no merit report addresses whether Johnson received ineffective assistance of counsel and whether the sentence was unduly harsh. Orzel concludes that these possible issues have no arguable merit. Based upon our independent review of the record, we conclude that his analysis of these issues is correct.

Both the no merit report and Johnson's response raise the issue of whether there was sufficient evidence to support the jury verdict. An appellate court will affirm a conviction if it can conclude that a jury, acting reasonably, could be convinced, beyond a reasonable doubt, by evidence the jurors had a right to believe and accept as true. *State v. Teynor*, 141 Wis.2d 187, 204, 414 N.W.2d 76, 82 (Ct. App. 1987). The reviewing court considers the evidence in the light most favorable to the jury's verdict. *State v. Barksdale*, 160 Wis.2d 284, 289-90, 466 N.W.2d 198, 200 (Ct. App. 1991).

There was sufficient evidence to support the verdict. The thirteen-year-old victim testified that she was sleeping across the foot of the bed normally shared by Johnson and her aunt. She woke when Johnson began rubbing her chest with his hand. She rolled onto her stomach to stop him. Her testimony then described two acts of finger-to-vagina intercourse, one act of penis-to-vagina sexual contact, and one act of penis-to-vagina intercourse committed by Johnson. The victim testified that she believed Johnson was awake although he pretended to be asleep. The jury also heard evidence that after his arrest Johnson gave a statement in which he admitted brief penis-to-vagina contact. The jury was entitled to believe the victim's testimony, which was corroborated, in part, by Johnson's statement to police. The jury was also

entitled to disbelieve Johnson's defense that he was more asleep than awake at the time and that he mistook the victim for her aunt.

In his response, Johnson also states that he was misrepresented by his first lawyer and that the appointed public defender did not do what he told Johnson he would do about the case. There is, however, no discussion of either of these claims. Lacking Johnson's clarification, the court cannot address either issue.

Our independent review of the record did not disclose any additional potential issues for appeal. Therefore, any further proceedings on Johnson's behalf would be frivolous and without arguable merit within the meaning of *Anders* and RULE 809.32(1), STATS. Accordingly, the judgment of conviction is affirmed, and Orzel is relieved of any further representation of Johnson on this appeal.

By the Court. – Judgment affirmed.