COURT OF APPEALS
DECISION
DATED AND RELEASED

FEBRUARY 4, 1997

NOTICE

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.

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

No. 96-2710-CR-NM

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

ESTELLA MARIE IDDINGS,

Defendant-Appellant.

APPEAL from a judgment and an order of the circuit court for Brown County: PETER NAZE, Judge. *Affirmed*.

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Estella Iddings appeals a judgment of conviction on two counts of party to delivery of cocaine to a minor, one count of party to incest, and two counts of second-degree sexual assault of a child. She also appeals an order denying her motion for postconviction relief. Iddings' appellate counsel has filed a no merit report pursuant to RULE 809.32, STATS., and ***Anders v. California***, 386 U.S. 738 (1967). Upon consideration of the report, Iddings' response, and an independent review of the record, we conclude there is no arguable merit to any issue that could be raised on appeal. Therefore, we

affirm the judgment of conviction and relieve Attorney Len Kachinsky of further representing Iddings in this matter.

The victim, Renee S., lived with her father at Iddings' apartment. The three would use cocaine together and engage in sexual contact. Iddings also took Renee to the home of Equinees Boyles where they used cocaine. Boyles engaged in sexual intercourse with Renee.

The no merit report addresses the sufficiency of the evidence to support the convictions. Iddings' response also addresses this issue. She suggests that Renee was induced to give false information to police and that Renee's testimony was too conflicting to be credible. Whether Renee gave false information to police does not change her trial testimony. While Renee's testimony conflicted with her testimony at the preliminary hearing regarding dates of certain occurrences, such conflicts did not render her testimony incredible as a matter of law. It was for the jury to determine the weight and credibility. *See* ***State v. Wilson,*** 149 Wis.2d 878, 894, 440 N.W.2d 534, 540 (1989). We conclude that the evidence was sufficient to support the convictions.

The no merit report also addresses whether the trial court erroneously exercised its discretion in permitting the amendment of the dates of the occurrences for counts four and five to conform with the evidence presented at trial. Iddings claims this was unfair. We agree with counsel's analysis that the trial court properly exercised its discretion under § 971.29(2), STATS. The amendment was consistent with Renee's testimony. Iddings was not prejudiced because the theory of defense was not alibi. There is no merit to a claim that the amendment was improper.

The no merit addresses whether a motion to suppress Iddings' prearrest statement to police was properly denied and whether it was proper to exclude evidence of Renee's prior sexual conduct with her father and Renee's plea agreement in a separate case. We conclude that there is no arguable merit to a claim that the trial court erroneously exercised its discretion on these evidentiary questions. The trial court found no objective evidence that Renee's plea agreement reducing an attempted first-degree homicide charge to aggravated battery was an inducement for information Renee provided in this case. The rape shield law, § 972.11, STATS., does not permit the introduction of

the victim's past conduct with other people, even if they are co-actors with the defendant.

Iddings' postconviction motion sought a new trial on the grounds of newly discovered evidence and ineffective assistance of trial counsel. Both claims centered on Boyles' denial of sexual intercourse with Renee on charges brought against him after Iddings' trial. In her response, Iddings contends that the testimony adduced at Boyles' trial would have changed the result of her trial and that trial counsel should have called Renee's mother to testify about behavioral problems Renee suffered before meeting Iddings.

Our review of the postconviction motion hearing convinces us that the trial court properly concluded that trial counsel had a reasonable strategy reason for not calling Boyles, at that time an already convicted felon, at Iddings' trial. The trial court's conclusion that Iddings was not prejudiced by the failure to present other witnesses that did not substantially impeach Renee's testimony and would only have conflicted with Iddings' testimony is supported by the record. The same is true of the trial court's conclusion that it was not reasonably probable that a different result would be reached on a new trial. There is no merit to a claim that the motion for a new trial should have been granted.

Iddings was sentenced to a total of thirty years' imprisonment with a ten-year consecutive term of probation. Iddings claims that the trial court abused its discretion in sentencing her because it based the sentence on Iddings' "association with people [the court] disapproved of." However, the record reflects that the trial court considered the appropriate factors, including Iddings' prior record and lack of remorse and empathy for her victim. Although mentioned by the court, no undue weight was placed on Iddings' association with convicted felons.

Iddings also claims that the author of the presentence report was biased because Renee's father was in a violent-offender's group run by the author. Iddings was not prejudiced. The trial court is not bound by the recommendation of the presentence report. Here the court imposed a sentence less than that recommended by the report's author. Moreover, there is no suggestion that any factual information in the report was inaccurate.

Our review of the record discloses no other potential issues for appeal. Attorney Len Kachinsky is relieved from further representing Iddings in this matter.

By the Court.—Judgment and order affirmed.