No. 23 - 6185

IN THE

SUPREME COURT OF THE UNITED STATES

Jibril A. Wilson — PETITIONER
(Your Name)

vs.

Steven Johnson, Warden — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States District Court For the Eastern district of Wisconsin
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jibril A. Wilson
(Your Name)

Milwaukee Secure Detention Facility 1015 N. 10 St.
(Address)

Milwaukee, WI 53233
(City, State, Zip Code)

414-882-3956
(Phone Number)

QUESTION(S) PRESENTED

1.) The Jury Could not have reasonably found Petitioner guilty of Child enticement Where Petitioner Was found not guilty of Sexual assault intercourse or sexual assault contact Consistent with Wis. Stat, 948.02.

2.) Did the Jury find Proof beyond a reasonable doubt to find Petitioner Wilson Guilty of Child Enticement ?

3.) Did The Evidence at Trial Sufficiently Establish all the required ELements to find Petitioner Guilty of Child enticement?

4.) Was Counsel defective for failing to Provide effective assistance at trial and failing to move for a dismissal?

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TABLE OF AUTHORITIES CITED

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[√] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix D to the petition and is

[ ] reported at _____; or,
[√] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix A to the petition and is

[ ] reported at _____; or,
[√] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[√] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix B to the petition and is

[ ] reported at _____; or,
[√] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the Supreme Court of Wisconsin court appears at Appendix C to the petition and is

[ ] reported at _____; or,
[√] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[ ] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was 10-31-22.

[✓] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[✓] For cases from **state courts:**

The date on which the highest state court decided my case was 11-13-17. A copy of that decision appears at Appendix C.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitutional Amendment XIV.

STATEMENT OF THE CASE

I have appealed A Decision From the Wisconsin Court of Appeals District 1, in Which it's Opinion was based on irrelevant evidence "Federal rules of Evidence Rule 402, 28 U.S.C.A. Slough, Relevancy Unraveled, 5 Kan. L. Rev. 1, 12-15 (1956); Trautman, logical or legal Relevancy--A Conflict in Theory, 5 Van. L. Rev. 385, 392 (1952). McCormick § 152, pp. 319-321." and Prejudical evidence "United States V. MacKay, 715 F.3d 807, 839 (10th Cir. 2013). U.S. V. Welshans, 892 F.3d 566, 575 (3d Cir. 2018). U.S. V. Sabean, 885 F.3d 27, 38 (1st Cir. 2018)." Through My appeals I have Cited several Very Important case laws like "Strickland V. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984)" and

Jackson V. Virginia 443 U.S. 307. Also in the District Court, Still the Court abused it's discretion as the United States District Court For The Eastern District of Wisconsin based it's opinion on Hearsay Speculation.

This is A Violation of My Constitutional rights.

REASONS FOR GRANTING THE PETITION

It would be detriment to Americans as A Whole if we allow the lower courts to base their Decisions Solely on Speculation." Bones V. Honeywell Int'l, Inc., 366 F.3d 869, 875 (10th Cir. 2004)." We Shall Stop anyone from being Subject to having their Decision based on irrelevant evidence." Federal rules of Evidence Rule 402, 28 U.S.C.A. Old Chief v. U.S., 519 U.S. 172, 183 (1997)." Also, I Pray to GOD that You Protect every American Constitutional rights from being Subject to unfair Prejudice." Federal rules of evidence Rule 403, 28 U.S.C.A. Sprint/united Mg Mt. V. Mendelsohn, 552 U.S. 379, 387 (2008)." In which is a contradiction of every case law referenced. An opinion shall not be completely based on hearsay." Crawford 541 U.S. at 51, 124 S.Ct. 1354." This abuse of discretion," United States V. Chaparro, 956 F.3d 462, 474 (7th Cir. 2020)." by the Lower Courts will Corrupt every other case decided by the States and federal Courts; as a result, Costing Americans loss of life, liberties and Property "united States Constitutional Amendment XIV" if not Corrected.

CONCLUSION

I Pray From the Deepest Part of my heart that You take 15 seconds to review this detrimental Circumstance.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Julius L. Wilson

Date: January 6, 2023

2022 WL 785278
Only the Westlaw citation is currently available.
United States District Court, E.D. Wisconsin.

Jabril Aki **WILSON**, Petitioner,

v.

Dylon RADTKE, Respondent.

Case No. 18-CV-1756-JPS

e.g.) 1 "Appendix A"

Signed 03/15/2022

Attorneys and Law Firms

Jabril Aki **Wilson**, Green Bay, WI, Pro Se.

Daniel J. O'Brien, Jennifer Renee Remington, Scott E. Rosenow, Wisconsin Department of Justice Office of the Attorney General, Madison, WI, for Respondent.

ORDER

J.P. Stadtmueller, U.S. District Judge

*1 Petitioner **Jabril** Aki **Wilson** ("**Wilson**") brings this petition for a writ of habeas corpus challenging a state court conviction arising from Milwaukee County Circuit Case No. 2012CF003720. (Docket #1). In that case, a jury found **Wilson** guilty of enticing a child with intent to have sexual contact in violation of Wisconsin Statute section 948.07(1). **Wilson** raises four grounds of habeas relief, the first three of which essentially challenge the sufficiency of the evidence used to convict him, and the fourth of which contends that trial counsel was ineffective for failing to appropriately address the "intent" element of the crime. For the reasons explained below, the Court finds that **Wilson's** petition is without merit and, therefore, must be denied. Accordingly, **Wilson's** motion for release pending appeal will also be denied. (Docket #23).

1. STANDARD OF REVIEW

State criminal convictions are generally considered final. Review may be had in federal court only on limited grounds. To obtain habeas relief from a state conviction, 28 U.S.C. § 2254(d)(1) (as amended by the Antiterrorism and Effective Death Penalty Act (the "AEDPA")) requires the petitioner to show that the state court's decision on the merits of his constitutional claim was contrary to, or involved an unreasonable application of, clearly established federal law as determined by the United States Supreme Court. 28 U.S.C. § 2254(d)(1); *Brown v. Payton*, 544 U.S. 133, 141 (2005). The burden of proof rests with the petitioner. *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011). The relevant decision for this Court to review is that of the last state court to rule on the merits of the petitioner's claim. *Charlton v. Davis*, 439 F.3d 369, 374 (7th Cir. 2006).

A state-court decision runs contrary to clearly established Supreme Court precedent "if it applies a rule that contradicts the governing law set forth in [those] cases, or if it confronts a set of facts that is materially indistinguishable from a decision of [the Supreme] Court but reaches a different result." *Brown*, 544 U.S. at 141. Similarly, a state court unreasonably applies clearly established Supreme Court precedent when it applies that precedent to the facts in an objectively unreasonable manner. *Id.*; *Bailey v. Lemke*, 735 F.3d 945, 949 (7th Cir. 2013).

The AEDPA undoubtedly mandates a deferential standard of review. The Supreme Court has "emphasized with rather unexpected vigor" the strict limits imposed by Congress on the authority of federal habeas courts to overturn state criminal convictions. *Price v. Thurmer*, 637 F.3d 831, 839 (7th Cir. 2011). It is not enough for the petitioner to prove the state courts were wrong; he must also prove they acted unreasonably. *Harrington v. Richter*, 562 U.S. 86, 101 (2005); *Campbell v. Smith*, 770 F.3d 540, 546 (7th Cir. 2014) ("An 'unreasonable application of' federal law means 'objectively unreasonable, not merely wrong; even 'clear error' will not suffice.' ") (quoting *White v. Woodall*, 134 S. Ct. 1697, 1702 (2014)).

*2 Indeed, the petitioner must demonstrate that the state court decision is "so erroneous that 'there is no possibility fairminded jurists could disagree that the state court's decision conflicts with [the Supreme] Court's precedents.' " *Nevada v. Jackson*, 133 S. Ct. 1990, 1992 (2013) (quoting *Harrington*, 562 U.S. at 102). The state court decisions must "be given the benefit of the doubt." *Woodford v. Visciotti*, 537 U.S. 19, 24 (2002); *Hartjes v. Endicott*, 456 F.3d 786, 792 (7th Cir. 2006). Further, when a state court applies general constitutional standards, it is afforded even more latitude under the AEDPA in reaching decisions based on those standards. *Knowles v. Mirzayance*, 556 U.S. 111, 123 (2009); *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004) ("[E]valuating whether a rule application was unreasonable requires considering the rule's specificity. The more general the rule, the more leeway courts have in reaching outcomes in case-by-case determinations.").

As the Supreme Court has explained, "[i]f this standard is difficult to meet, that is because it was meant to be." *Harrington*, 562 U.S. at 102. Indeed, Section 2254(d) stops just short of "imposing a complete bar on federal-court relitigation of claims already rejected in state proceedings." *See id.* This is so because "habeas corpus is a 'guard against extreme malfunctions in the state criminal justice systems,' not a substitute for ordinary error correction through appeal." *Id.* at 102–03 (quoting *Jackson v. Virginia*, 443 U.S. 307, 332 n.5 (1979) (Stevens, J., concurring)).

A federal court may also grant habeas relief on the alternative ground that the state court's adjudication of a constitutional claim was based upon an unreasonable determination of the facts in light of the evidence presented. 28 U.S.C. § 2254(d)(2). The underlying state court findings of fact and credibility determinations are, however, presumed correct. *Newman v. Harrington*, 726 F.3d 921, 928 (7th Cir. 2013). The petitioner overcomes that presumption only if he proves by clear and convincing evidence that those findings are wrong. 28 U.S.C. § 2254(e)(1); *Campbell*, 770 F.3d at 546. "A decision 'involves an unreasonable determination of the facts if it rests upon factfinding that ignores the clear and convincing weight of the evidence.' " *Bailey*, 735 F.3d at 949–50 (quoting *Goudy v. Basinger*, 604 F.3d 394, 399–400 (7th Cir. 2010)). " '[A] state-court factual determination is not unreasonable merely because the federal habeas court would have reached a different conclusion in the first instance.' " *Burt v. Titlow*, 134 S. Ct. 10, 15 (2013) (quoting *Wood v. Allen*, 558 U.S. 290, 301 (2010)). If shown, an unreasonable factual determination by the state court means that this Court must review the claim in question *de novo*. *Carlson v. Jess*, 526 F.3d 1018, 1024 (7th Cir. 2008).

2. RELEVANT BACKGROUND

In 2012, the State of Wisconsin charged seventeen-year-old **Wilson** with second-degree sexual assault of a child, kidnapping, enticement of a child with intent to have sexual contact, and being a party to the crime of second-degree sexual assault of a child. The charges arose after fifteen-year-old S.P. filed a police report alleging that **Wilson** took her to his friend's house and raped her. *See* (Docket #15-2 at 1–2). A jury acquitted **Wilson** of both charges of second-degree sexual assault, as well as of the kidnapping charge, but it found him guilty of the enticement charge, in violation of Wisconsin Statute section 948.07(1). As a result of this conviction, the state court sentenced **Wilson** to ten years' imprisonment.

At trial, the jury heard testimony from S.P., who explained that **Wilson** (who went by the moniker "Blue") drove up to her while she was waiting at a bus stop and offered her a ride back to her group home. However, **Wilson** detoured to pick up a friend, then drove to another house where **Wilson** said he was going to change clothes. S.P. testified that she went with them into the house and **Wilson** gave her the option of sitting in the living room or coming with him to his bedroom. She decided to go upstairs with him. Once in his room, they talked for a bit. After a short while, **Wilson** asked her if she wanted to have sex with him. She said no. When he asked her why, she told him that she was ready to go home. **Wilson** told her she would have to walk home if she refused to have sex with him. She reiterated that she wanted to go home. He said that she could not leave unless she performed oral sex on him. She relented. When she asked again if she could go home, he insisted upon having intercourse. She continued to say that she did not want to, and he continued to say that he would not take her home. She relented again.

***3** Afterwards, **Wilson** made comments along the lines that S.P. now belonged to him, and he called several more of his male friends—between ten and fifteen—to come over and look at S.P. The group huddled in the small room that S.P. believed to be **Wilson's** bedroom and used the flashlights on their phones to appraise her body. **Wilson** stood by and allowed this to happen. Several of the men raped S.P.

S.P. testified that **Wilson** and the other men kept her in the house—which she eventually understood to be abandoned—for three days. During this time, she was barely fed. On the third day, they kicked her out. S.P. began walking home, but Carlita Harris ("Harris"), who worked at S.P.'s group home (and who later testified, as well), happened to drive by and pick her up. Harris noticed S.P.'s torn clothing and missing hair extensions and asked her what had happened. Eventually, S.P. told her. Harris helped S.P. receive medical treatment and file a police report.

When S.P. first spoke to the police, they did not believe her and suggested to her that she was lying. She found the process of talking to them exhausting. At a certain point, she decided she did not want to keep being questioned, so she agreed with them that she was lying. A few years later, however, new evidence surfaced, and the police reopened her case. The defense cross-examined her on the inconsistencies between her police reports and the testimony elicited during the direct examination. *See e.g.*, (Docket #15-13 at 106–37).

The jury also heard testimony from **Wilson**, who denied that he had any kind of sex with S.P. (Docket #15-16 at 65:13–17). **Wilson** confirmed that he gave his number to S.P. at a bus stop, but he said that S.P. had been the one to request a ride home. When **Wilson** stopped at the first house, S.P. told him she wanted to hang out and did not want to return to the group home. **Wilson** took S.P. and his friend Christian to the abandoned house (which his friend Christian's family had recently moved out of) because that was where everyone from his neighborhood went to hang out. Once they got to the house, S.P., **Wilson**, and Christian talked and smoked for thirty to forty-five minutes. S.P. told them about her frustrations with the group home. At a certain point, **Wilson** noticed that she and Christian had started talking closely. The trio migrated upstairs, where they continued talking about S.P.'s group home situation. Eventually, **Wilson** left Christian and S.P. alone and went home for dinner. As he was leaving, he offered to drive S.P. home, but she said she would prefer to continue hanging out with Christian.

Wilson returned to the house with some friends later that night, after 11:00 p.m., and he found that S.P. was still there. The group continued to smoke marijuana and talk. **Wilson** did not see S.P. partake in smoking, and he left the house by 2:00 a.m. When he left, S.P. indicated that she was going to spend the night, and Christian—whose family had owned the house—told her that was okay. At some point over the weekend, Christian told **Wilson** that he and S.P. engaged in a sexual relationship, and that S.P. had been involved with other visitors to the house, as well. **Wilson**, who had initially brought S.P. to the house, was put off by this. However, **Wilson** never saw S.P. have any kind of sex with anyone, including himself.

The next day, Saturday, **Wilson** did not go to the abandoned house because he did not feel like smoking or hanging out. On Sunday afternoon, he went back to the abandoned house with a group of friends, and S.P. answered the door. **Wilson** asked her where Christian was, but S.P. said she did not know. **Wilson** asked her why she was still around, and she told **Wilson** that Christian had told her she could stay. **Wilson** thought S.P. was in a good mood and did not notice any changes to her demeanor between the first and third day.

*4 The group entered the house to smoke and began talking about inviting a few girls over. At this point, S.P.'s presence presented a problem, so the group asked her to leave. S.P. refused, saying she would get in trouble if she went back to the group home, and that she had already run away so there was no point in going back. **Wilson** tried to reason with her to go, but she refused. One of **Wilson's** friends noted that if the group home was looking for her, they might get in trouble if the group home found out that S.P. was staying at their abandoned house. Eventually, the group talked S.P. out of the house and locked the door. S.P. got angry and began yelling.

Wilson also testified about his earlier interview with the police, in which he admitted to having oral sex with S.P. He testified to the nature of the interview, the circumstances surrounding the interrogation, and the reason why he said they engaged in oral sex. The jury heard that, during the interrogation, **Wilson**, a minor, was questioned without the presence of a guardian and was inebriated, sleep deprived, and dizzy from having his stomach pumped. **Wilson** explained that he had gone along with what the detective told him Christian had said because **Wilson** thought that was what they wanted to hear, and he wanted to go home. The State of Wisconsin thoroughly cross examined him on this discrepancy and also elicited his acknowledgment that some people probably did bring their girlfriends to the house in order to have sex. (Docket #15–17 at 44:6–15).

After hearing this and other evidence, the jury received an instruction regarding the child enticement charge:

> Child enticement as defined in Section 948.07 of the Criminal Code of Wisconsin is committed by one who with intent to have sexual intercourse causes any child who has not attained the age of 18 years to go into any vehicle, building, room or secluded place. Before you may find the defendant guilty of this offense the State must prove by evidence which satisfies you beyond a reasonable doubt that the following three elements were present:
>
> One, the defendant caused [S.P.] to go into a building.
>
> Two, the defendant caused [S.P.] to go into a building with intent to have sexual intercourse with her. The phrase "with intent to" means that the defendant must have had the mental purpose to have sexual intercourse with [S.P.].
>
> And three, [S.P.] was under the age of 18 years. Knowledge of [S.P.]'s age by the defendant is not required and mistake regarding her age is not a defense. Again, you cannot look into a person's mind to find intent. Intent must be found, if found at all, from the defendant's acts, words[,] and statements, if any, and from all the facts and circumstances bearing upon intent.

> If you're satisfied beyond a reasonable doubt that all three elements of this offense have been proved[,] you should find the defendant guilty. If you're not so satisfied[,] you must find the defendant not guilty.

(Docket #15-18 at 46:6–47:8). During deliberations, the jury asked, "does a person thinking, hoping, or being interested in an action equal intent?" (Docket #15-20 at 3:11–13). After argument from counsel, the state court issued a supplementary instruction modeled off the original instruction, (*id.* at 10:18–22), explaining, effectively, that "with intent to" "means that the defendant must have had the mental purpose to [commit the action] or was aware that his conduct was practically certain to cause that result." Wis. Jury Inst. 923(b).

3. ANALYSIS

3.1 Sufficiency of Evidence

"[T]he Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." *In re Winship*, 397 U.S. 358, 364 (1970). To successfully challenge the sufficiency of the evidence of a conviction, a habeas petitioner must show that "no rational trier of fact could have found proof of guilt beyond a reasonable doubt" based on the evidence presented at trial. *Jackson v. Virginia*, 443 U.S. 307, 324 (1979). The court need not "ask itself whether it believes that the evidence at the trial established guilt beyond a reasonable doubt." *Id.* at 318–19 (quoting *Woodby v. INS*, 385 U.S. 276, 282 (1966)). "Instead, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id.*

*5 In *State v. Poellinger*, the Wisconsin Supreme Court adopted a similarly deferential standard for reviewing challenges to the sufficiency of evidence, which stems from *Jackson v. Virginia*. 451 N.W.2d 752, 757 (Wis. 1990). Specifically, in *Poellinger*, the Wisconsin Supreme Court stated that "when faced with a record of historical facts which supports more than one inference, an appellate court must accept and follow the inference drawn by the trier of fact unless the evidence on which that inference is based is incredible as a matter of law." *Id.* (citing *Jackson*, 443 U.S. at 326).

As far as the burden of proof is concerned, the State needed to provide evidence to prove "beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." *In re Winship*, 397 U.S. at 364. Accordingly, in order to prove a violation of Wis. Stat. § 948.07(1), the state needed evidence to establish that **Wilson** (1) took S.P. to the abandoned house; (2) with the intent to commit a sex act; (3) and S.P. was under the age of 18. **Wilson** does not take issue with the first or third elements; his primary argument is that the state did not prove his intent because the jury acquitted him of all other sex charges. He contends that the mere fact that he brought S.P. to the house does not, intrinsically, mean that he had the intent to engage in sex with her. Rather, he argues, he may well have wanted to hang out and smoke weed with her.

The Wisconsin Court of Appeals addressed **Wilson's** contention that there was insufficient evidence to sustain a verdict on the child enticement charge. It explained:

> **Wilson** testified that [he] was driving when he saw S.P. at a bus stop. He stopped to talk to her. **Wilson** testified that he asked for S.P.'s phone number, but S.P. did not have a phone so he gave her his number instead. **Wilson** testified that S.P. then asked for a ride back to the place where she was staying, which was a group home. **Wilson** testified that he stopped at his house on the way, where neighbors were outside talking. **Wilson** testified that S.P. then said she wanted to hang out and did not want to go to the group home. **Wilson** testified that he took S.P. to the home of his friend Christian, where he and his friends had been going to drink and smoke because Christian's family had recently moved out. **Wilson** testified that he did not intend to have sexual contact with S.P. when he took her to the house but acknowledged on cross-exam that his friends sometimes brought girls there to have sex with them. **Wilson** testified that he was seventeen years old when these events occurred and S.P. told him she was eighteen years old. There was no dispute that S.P. was, in fact, fifteen. Because a reasonable

> jury could have concluded that **Wilson** brought S.P. to Christian's house with the intent to have sexual contact with S.P., there would be no arguable merit to a challenge to the sufficiency of the evidence.

(Docket #2-1 at 5–6).

The Wisconsin Court of Appeals manages to characterize the facts favorably to **Wilson**, while being appropriately deferential to the jury's conclusion. In other words, based solely on the facts presented in **Wilson's** testimony, the Court of Appeals determined that a factfinder could draw a reasonable inference that **Wilson** took S.P. to the house with intent to have sexual contact. *Poellinger*, 451 N.W.2d at 757 ("[W]hen faced with a record of historical facts which supports more than one inference, an appellate court must accept and follow the inference drawn by the trier of fact unless the evidence on which that inference is based is incredible as a matter of law."). This was the correct standard to apply when reviewing a sufficiency of evidence challenge, and the Court will not disturb the conclusion. The fact that the jury concluded that **Wilson** did not *actually* have sexual contact with S.P. does not foreclose their conclusion that he initially intended for it, and there was some evidence in **Wilson's** testimony by which they reasonably could have concluded that he did intend for it (i.e., he gave her his number, he gave her a ride, and he took her to a place where people sometimes had sex). Therefore, **Wilson's** challenge to the sufficiency of the evidence fails.

3.2 Challenges to Jury Instructions

*6 **Wilson** also contends that his trial counsel was ineffective for failing to challenge the "intent" element of the jury instructions which, he claims, were confusing to the jury, as evidenced by their question regarding intent. This Court cannot consider this claim unless it has first been "fully and fairly presented ... to the state appellate courts," thereby giving the courts a "meaningful opportunity to consider the substance of the claim[ ] that he later presents in his federal challenge." *Bintz v. Bertrand*, 403 F.3d 859, 863 (7th Cir. 2005); 28 U.S.C. § 2254(b)(1)(A). Fair presentment requires that the petitioner apprise the state courts of the constitutional nature of the claim, although it "does not require hypertechnical congruence between the claims made in the federal and state courts." *Anderson v. Benik*, 471 F.3d 811, 815 (7th Cir. 2006) (citation omitted).

Petitioner did not raise the intent issue in his briefing before the Wisconsin state court, and the Wisconsin state court has not had the opportunity to consider the issue. Accordingly, this Court cannot engage in an analysis of whether **Wilson's** counsel was ineffective. This finding does not skirt a meritorious issue: **Wilson's** counsel argued vigorously regarding what instruction the jury should receive in response to its question on intent. It does not appear that counsel was at all unreasonable in his representation. *United States v. Strickland*, 466 U.S. 668, 690 (1984).

4. CONCLUSION

For the reasons explained above, the Court finds that **Wilson's** asserted grounds for relief are without merit. The Wisconsin state courts did not err in their conclusions of law and fact regarding whether **Wilson's** due process rights were violated by the sufficiency of the evidence on the child enticement charge. Additionally, **Wilson's** challenge to his attorney's failure to appropriately argue the intent element is both not exhausted—and therefore not properly before this Court—and unpersuasive.

Under Rule 11(a) of the Rules Governing Section 2254 Cases, "the district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant." To obtain a certificate of appealability under 28 U.S.C. § 2253(c)(2), **Wilson** must make a "substantial showing of the denial of a constitutional right" by establishing that "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (internal citations omitted). As the Court discussed above, no reasonable jurists could debate whether the petition has merit. The Court must, therefore, deny **Wilson** a certificate of appealability.

Accordingly,

IT IS ORDERED that Petitioner's petition for a writ of *habeas corpus* pursuant to 28 U.S.C. § 2254 (Docket #1) be and the same is hereby **DENIED**;

IT IS FURTHER ORDERED that Petitioner's motion for release pending appeal (Docket #23) be and the same is hereby **DENIED as moot**;

2022 WL 19229484
Only the Westlaw citation is currently available.
United States Court of Appeals, Seventh Circuit.

Jabril WILSON, Petitioner-Appellant,

v.

Dylon RADTKE, Respondent-Appellee.

No. 22-1457

Submitted October 19, **2022**

(e.g.) or Appendix D.

Decided October 31, **2022**

Appeal from the United States District Court for the Eastern District of Wisconsin. No. 18-CV-1756-JPS, J.P. Stadtmueller, *Judge.*

Attorneys and Law Firms

Jabril A. **Wilson**, Milwaukee, WI, Pro Se.

Daniel J. O'Brien, Assistant Attorney General, Office of the Attorney General Wisconsin Department of Justice, Madison, WI, for Respondent-Appellee.

Before FRANK H. EASTERBROOK, Circuit Judge, AMY J. ST. EVE, Circuit Judge

ORDER

***1 Jabril Wilson** has filed a notice of appeal from the denial of his petition under 28 U.S.C. § 2254 and an application for a certificate of appealability. This court has reviewed the final order of the district court and the record on appeal. We find no substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2).

Accordingly, the request for a certificate of appealability is DENIED.

All Citations

Not Reported in Fed. Rptr., 2022 WL 19229484

End of Document

2017 WL 11685544
Only the Westlaw citation is currently available.

Court of Appeals of Wisconsin.

STATE of Wisconsin

v.

Jibril Aki **WILSON**

2014AP2811-CRNM

e.g. 1 | "Appendix B"

July 21, 2017

(L.C. #2012CF3720)

Attorneys and Law Firms

Karen A. Loebel, Asst. District Attorney, 821 W. State St., Milwaukee, WI 53233

Colleen Marion, Asst. State Public Defender, P.O. Box 7862, Madison, WI 53707-7862

Gregory M. Weber, Assistant Attorney General, P.O. Box 7857, Madison, WI 53707-7857

Before Brennan P.J., Kessler and Brash JJ.

Opinion

***1 Jibril** Aki **Wilson** appeals a judgment convicting him of one count of child enticement. Attorney Colleen Marion filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2015-16),[1] and *Anders v. California*, 386 U.S. 738, 744 (1967). **Wilson** responded to the no-merit report. This no-merit appeal was then stayed pending the Wisconsin Supreme Court's decision in *State v. Loomis*, 2016 WI 68, 371 Wis. 2d 235, 881 N.W.2d 749, which has since been decided. After considering the no-merit report and the response, and after conducting an independent review of the record as mandated by *Anders*, we conclude that there are no issues of arguable merit that **Wilson** could raise on appeal. Therefore, we affirm the judgment of conviction.

Wilson was charged with two counts of second-degree sexual assault of a child sixteen years of age or younger, one of which was as a party to a crime, one count of kidnapping, and one count of child enticement. The jury acquitted **Wilson** of the first three charges, but convicted him of child enticement. At the time **Wilson** committed the crimes, he was seventeen years old and the victim was fifteen years old. The circuit court sentenced **Wilson** to twenty years of imprisonment, with ten years of initial confinement and ten years of extended supervision. The circuit court also ordered **Wilson** to register as a sex offender.

The no-merit report first addresses whether there would be arguable merit to a claim that the circuit court improperly denied **Wilson's** motion to suppress recorded statements he made to police. "When the State seeks to admit statements made during custodial questioning, ... it must establish that the suspect was informed of his *Miranda*[2] rights, understood them, and knowingly and intelligently waived them." *State v. Hindsley*, 2000 WI App 130, ¶21, 237 Wis. 2d 358, 614 N.W.2d 48. It must also "establish that the statement was voluntary." *Id.*

Wilson's pretrial suppression motion acknowledged that the police read him his *Miranda* rights and he told police that he understood them. However, the motion alleged that **Wilson's** decision to waive his *Miranda* rights was not voluntary because **Wilson** was intoxicated and sleep-deprived.

At the suppression hearing, Detective Elizabeth Stewart testified that she was present during **Wilson's** interrogation, which began at 5:50 a.m., about twelve hours after his arrest. Stewart testified that **Wilson** did not seem intoxicated and was able to respond in a meaningful way to questions, including providing narrative answers to questions. She also testified that **Wilson** never complained that he was under the influence of drugs or alcohol and he never indicated that he was having difficulty understanding based on having taken drugs or consumed alcohol.

In contrast, **Wilson** testified that he was very intoxicated when he was arrested because he consumed a substantial amount of hard liquor, was smoking marijuana, and had taken ecstasy. **Wilson** testified that he asked the police to take him to the hospital at about 1:00 a.m. because he felt ill due to his level of intoxication. **Wilson** said that hospital personnel treated him, and he was returned to jail after about four hours.

Wilson also testified that he did not sleep at all between his arrest and the interrogation that took place twelve hours later at 5:50 a.m. **Wilson** said that he was not afraid during the interrogation and did not feel threatened, but he did not realize what he was doing because he was still intoxicated and had not gotten any sleep.

***2** The circuit court explained in its oral ruling denying the motion to suppress that it listened to the tape of **Wilson's** interview, and his speech was not slurred, his answers were coherent, and he was responsive to the questions asked. The circuit court noted that **Wilson** "rattled off" multiple phone numbers and never said that he was drunk or high. In addition, the circuit court found Stewart's testimony that **Wilson** was responsive and coherent more credible than **Wilson's** testimony that he told the detectives that he was intoxicated before the taped portion of the interview started.

"When the circuit court acts as the finder of fact, it is the ultimate arbiter of the credibility of the witnesses and the weight to given to each witness's testimony." *State v. Peppertree Resort Villas, Inc.*, 2002 WI App 207, ¶19, 257 Wis. 2d 421, 651 N.W.2d 345. Based on the circuit court's observation that **Wilson** was responsive and coherent, and its determination that Stewart's testimony was more credible than **Wilson's** testimony, we conclude that there would be no arguable merit to a challenge to the circuit court's decision denying **Wilson's** motion to suppress.

With respect to **Wilson's** interrogation, the no-merit report also addresses whether there would be arguable merit to a claim that **Wilson's** trial lawyer should have challenged the fact that the police would not allow **Wilson** to call his parents. "[F]ailure to call the parents [of a juvenile] for the purpose of depriving the juvenile of the opportunity to receive advice and counsel will be considered strong evidence that coercive tactics were used to elicit the incriminating statements." *State v. Jerrell C.J.*, 2005 WI 105, ¶43, 283 Wis. 2d 145, 699 N.W.2d 110 (citation and quotation marks omitted). Absent other evidence of coercive tactics, failure to call a juvenile's parents is not per se coercive. Moroever, the no-merit report points out that **Wilson** does not allege that his statement was involuntary due to coercive police tactics, but rather that his waiver was involuntary because he was intoxicated. Under these circumstances, we conclude that there would be no arguable merit to a claim that **Wilson** received ineffective assistance of trial counsel because his lawyer did not challenge the fact that **Wilson's** parents were not called.

The no-merit next addresses whether the evidence was sufficient to support the jury's verdict finding **Wilson** guilty of one count of child enticement. We will not overturn a jury's verdict "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) (citation omitted). "[T]he trier of fact is the sole arbiter of the credibility of the witnesses and alone is charged with the duty of weighing the evidence." *State v. Below*, 2011 WI App 64, ¶4, 333 Wis. 2d 690, 799 N.W.2d 95.

A defendant is guilty of child enticement if the State proves: (1) the defendant caused the victim to go into a secluded place; (2) the defendant caused the victim to go into the secluded place with the intent to have sexual contact or sexual intercourse; (3) the victim was under the age of eighteen. *See* WIS. JI-CRIMINAL 2134.

Wilson testified that was driving when he saw S.P. at a bus stop. He stopped to talk to her. **Wilson** testified that he asked for S.P.'s phone number, but S.P. did not have a phone so he gave her his number instead. **Wilson** testified that S.P. then asked for a ride back to the place where she was staying, which was a group home. **Wilson** testified that he stopped at his house on the way, where neighbors were outside talking. **Wilson** testified that S.P. then said she wanted to hang out and did not want to go to the group home. **Wilson** testified that he took S.P. to the home of his friend Christian, where he and his friends had been going to drink and smoke because Christian's family had recently moved out. **Wilson** testified that he did not intend to have sexual contact with S.P. when he took her to the house but acknowledged on cross-exam that his friends sometimes brought girls there to have sex with them. **Wilson** testified that he was seventeen years old when these events occurred and S.P. told him she was eighteen years old. There was no dispute that S.P. was, in fact, fifteen. Because a reasonable jury could have concluded that **Wilson** brought S.P. to Christian's house with the intent to have sexual contact with S.P., there would be no arguable merit to a challenge to the sufficiency of the evidence.

***3** The no-merit report addresses: (1) whether there would be arguable merit to a claim that the circuit court improperly denied **Wilson's** motion to exclude S.P.'s statements to the sexual assault treatment nurse; (2) whether there would be arguable merit to a claim that the circuit court improperly denied **Wilson's** motion to exclude evidence that S.P.

overheard **Wilson** say he lost his gun during a robbery attempt; (3) whether there would be arguable merit to a claim that the circuit court improperly denied **Wilson's** motion to exclude evidence of sexual acts taking place at the house involving other people; (4) whether there would be arguable merit to a claim that the circuit court improperly denied **Wilson's** pretrial motion to exclude evidence that S.P. sustained a lip injury; and (5) whether there would be arguable merit to a claim that the circuit court improperly denied **Wilson's** motion to exclude Donte Carpenter's testimony about his sexual contact with S.P. **Wilson** was acquitted of the charges to which these arguments pertain. Therefore, these arguments are not properly raised in the context of an appeal from **Wilson's** conviction for child enticement.

Finally, the no-merit report addresses whether there would be any arguable merit to a claim that the circuit court misused its sentencing discretion. The court sentenced **Wilson** to ten years of initial confinement and ten years of extended supervision. During the sentencing hearing, the circuit court began by explaining to **Wilson** the various roles it played at different stages in the proceedings. The circuit court explained to **Wilson** that although he would not be sentenced for the crimes for which he was acquitted, the circuit court was allowed to consider the circumstances of those charges in deciding **Wilson's** sentence. *See State v. Leitner*, 2001 WI App 172, ¶44, 247 Wis. 2d 195, 633 N.W.2d 207 (a sentencing court may consider factual circumstances related to offenses for which there has been an acquittal).

In its extensive sentencing remarks, the circuit court considered mitigating and aggravating factors in light of the primary goals of sentencing. The court said that this was a serious child enticement conviction because S.P. was repeatedly raped at the vacant home where **Wilson** took her. The court acknowledged that **Wilson** was acquitted of the kidnapping and sexual assault charges but said that he played a central role in what happened to the victim by approaching her at the bus stop and bringing her to the house.

The court noted that **Wilson** was only seventeen when the crime occurred, which the court considered to be a mitigating circumstance, as was the fact that **Wilson** faced difficulty growing up because his mother was an addict. Even so, the circuit court concluded that probation, which his lawyer requested, would unduly depreciate the seriousness of the crime. The court considered appropriate factors in deciding what length of sentence to impose and explained its application of the various sentencing guidelines in accordance with the framework set forth in *State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. Therefore, there would be no arguable merit to an appellate challenge to the sentence.

Although it was not addressed by the no-merit report, we have identified an additional issue that requires brief discussion. The circuit court considered a COMPAS assessment of **Wilson** when it imposed sentence. The Wisconsin Supreme Court recently rejected a defendant's argument that his due process rights were violated by the circuit court when it considered a COMPAS assessment in framing its sentence. *See State v. Loomis*, 2016 WI 68, ¶8, 371 Wis. 2d 235, 881 N.W.2d 749. *Loomis* held that a sentencing court may consider a COMPAS risk assessment at sentencing as one of many factors, as long as it abides by several limitations, which include never using the risk scores to determine the severity of the sentence and never using the risk scores to determine whether an offender should be incarcerated, as opposed to released on community supervision. *Id.*, ¶98.

At the sentencing hearing, the circuit court briefly touched on the COMPAS assessment included in the presentence investigation report, stating: "Other aspects of the PSI, I have to look at the COMPAS evaluation, which does say that there is a high risk of violent recidivism and a high risk of general recidivism, high history of violence, high probability of a criminal personality, high probability of family criminality."

*4 The circuit court's brief comments were its only mention of the COMPAS report in its lengthy and well-reasoned sentencing decision. Because the record does not indicate the circuit court used the COMPAS report to determine the severity of **Wilson's** sentence or to determine whether **Wilson** should be incarcerated, rather than released on community supervision, we conclude that there would be no arguable merit to a claim that the circuit court's use of the COMPAS assessment was improper.

Turning to **Wilson's** response, he raises multiple issues that are all predicated on a single underlying claim: **Wilson** contends that he should not have been convicted of child enticement because he was acquitted of sexual assault. **Wilson** argues that having sexual contact or sexual intercourse with the victim is an element of the offense of child enticement, and the jury concluded that he did not have sexual contact or sexual intercourse with S.P. when it acquitted him of two counts of second-degree sexual assault. [3]

Wilson is mistaken. Sexual contact or intercourse is not an element of the offense of child enticement. *See* WIS. STAT. § 948.07. Rather, *the intent* to have sexual contact or sexual intercourse is an element of the crime, regardless of whether sexual intercourse or sexual contact in fact occurred. *Id.* Here, the jury concluded that **Wilson** took S.P. to a secluded location *with the intent* of having sexual intercourse or sexual contact with S.P., regardless of whether sexual intercourse or sexual contact occurred. Because the potential issues **Wilson** raises in his response are all predicated on his argument that he should not have been convicted of child enticement because he did not have sexual intercourse or sexual contact with S.P., there would be no arguable merit to raising these issues on appeal.

Our independent review of the record reveals no potential issues of arguable merit. Therefore, we affirm the judgment of conviction and relieve Attorney Collen Marion of further representation of **Wilson**.

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 Collen Marion is relieved of further representation of **Wilson** in this matter. *See* WIS. STAT. RULE 809.32(3).

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

All Citations

Not Reported in N.W. Rptr., 2017 WL 11685544

Footnotes

1 All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

2 *Miranda v. Arizona*, 384 U.S. 436 (1966).

3 More specifically, **Wilson** argues that: (1) the crime of child enticement was not proven beyond a reasonable doubt because the jury concluded that he did not have sexual contact or intercourse with S.P. when it acquitted him of second-degree sexual assault; (2) the jury instructions were incorrect and the evidence was insufficient because he did not have sexual contact or intercourse with S.P.; (3) he received ineffective assistance of trial counsel because his lawyer did not raise these arguments; and (4) the circuit court misused its discretion in sentencing him because he was improperly convicted of child enticement.

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Jibril Aki WILSON

2014AP2811-CRNM

e.g., | "Appendix C"
11/13/2017

378 Wis.2d 427

See WI Rules of Appellate Procedure, Rule 809.23(3), regarding citation of unpublished opinions. Unpublished opinions issued before July 1, 2009, are of no precedential value and may not be cited except in limited instances. Unpublished opinions issued on or after July 1, 2009 may be cited for persuasive value.

2017 WI 101

Supreme Court of Wisconsin.

STATE

v.

Opinion

Petition for Review Denied.

Roggensack, C.J. did not participate.

All Citations

378 Wis.2d 427, 2017 WI 101, 905 N.W.2d 840 (Table)

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