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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 16 CR 6434
	)	
MARC WINNER,	)	Honorable
	)	Carol M. Howard,
Defendant-Appellant.	)	Judge presiding.

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JUSTICE GRIFFIN delivered the judgment of the court.  
Presiding Justice Mikva and Justice Harris concurred in the judgment.

**SUMMARY ORDER**

¶ 1 Following a 2018 bench trial, defendant Marc Winner was found guilty of one count of criminal sexual assault (720 ILCS 5/12-13(a)(2) (West 2008))<sup>1</sup> and one count of criminal sexual abuse (720 ILCS 5/12-15(a)(1) (West 2008)). The trial court imposed consecutive terms of 12 years' and 1 year's imprisonment, respectively.

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<sup>1</sup> Defendant's mittimus states that he was convicted for criminal sexual assault under 720 ILCS 5/11-1.20(a)(2), the statutory subsection under which that offense was renumbered after the date of the incident in this case. See Pub. Act 96-1551, Art. 2, § 5 (eff. July 1, 2011) (renumbering and amending 720 ILCS 5/12-13).

¶ 2 In August 2009, defendant was arrested in connection with an incident involving the victim, J.B. Defendant was released pending the results of a DNA test, which were never given to the assigned detective. In March 2013, defendant was arrested a second time, but a judge found no probable cause to detain him and he was again released. In April 2016, the State charged defendant by indictment with two counts of aggravated criminal sexual assault and one count of aggravated criminal sexual abuse. Subsequently, the State amended the indictment to allege two counts of criminal sexual assault and one count of aggravated criminal sexual abuse.

¶ 3 On July 20, 2016, defendant filed a motion to dismiss the indictment on speedy trial and due process grounds, asserting that the delay between his initial arrest in 2009 and the 2016 indictment prejudiced his defense. The trial court denied defendant's motion. Prior to trial, the State filed a motion to admit evidence from nine other complainants, and the trial court ruled the State could use four of the proposed other-crime incidents.

¶ 4 At trial, J.B. testified that in the evening of July 16, 2009, she went to a restaurant with a friend. While she was there, defendant, J.B.'s former boss, called her and later appeared at the restaurant, uninvited. At some point, J.B. went to defendant's apartment, where he offered her cocaine and later forcefully penetrated her vagina with his penis. Eventually, J.B. left defendant's apartment, found police officers, and told them what happened. J.B.'s sister testified that J.B. called her that night in distress, which J.B.'s stepfather confirmed in his testimony. A police officer testified that J.B. flagged him down and said she was raped. An Illinois State Police forensic biochemist testified that a partial male DNA profile from J.B.'s vaginal swab matched defendant's DNA. S.M. testified that in 2012 defendant forcefully penetrated her vagina with his fingers in his

apartment after forcing her to consume alcohol and pills. Defendant testified that he and J.B. “fooled around” but did not have intercourse.

¶ 5 The trial court acquitted defendant on one count of criminal sexual assault, and found him guilty of the other count of criminal sexual assault. The court also found defendant guilty of criminal sexual abuse as a lesser-included offense of aggravated criminal sexual abuse.

¶ 6 Defendant appealed, and the Office of the State Appellate Defender was appointed to represent him.

¶ 7 Under *Anders v. California*, 386 U.S. 738 (1967), defendant’s counsel has filed a motion requesting leave to withdraw as counsel based on the conclusion that an appeal in this case would lack arguable merit. Counsel has informed defendant of this conclusion and has filed a brief in support of the motion. Counsel’s brief identifies arguments that defendant could potentially assert on appeal and explains why the arguments are frivolous and without merit.

¶ 8 First, counsel considered whether the trial court erred in denying defendant’s motion to dismiss the indictment, but concluded that defendant’s case did not meet the grounds for a speedy trial violation or violate due process because there were no charges pending in 2009, the 2013 charges were dismissed following a finding of no probable cause, and he was not prejudiced by the delay.

¶ 9 Second, counsel considered whether the trial court erred in partially granting the State’s motion to introduce evidence of other crimes, but determined there were sufficient similarities between the offenses and the trial court properly weighed the probative value of the evidence against the potential prejudicial effect. Moreover, the State called one other crimes witness while the trial court had allowed four.

¶ 10 Third, counsel considered whether the trial court ascertained the validity of defendant's jury waiver, but concluded that the record of pretrial proceedings showed that defendant was sufficiently admonished that he had a right to a jury trial and of the difference between a jury trial and a bench trial, and defendant signed a written jury waiver.

¶ 11 Fourth, counsel considered whether the State's evidence established defendant's guilt beyond a reasonable doubt, but found the State met its burden. Specifically, J.B. testified that defendant forcefully penetrated her vagina, J.B.'s sister and stepfather corroborated her attempts to seek help, an officer testified that J.B. stated she was raped, and a male profile matching defendant's DNA was found on a vaginal swab collected from J.B.

¶ 12 Fifth, counsel considered whether any errors occurred at sentencing, but decided the trial court considered the appropriate facts, acknowledged the factors in mitigation, including defendant's history of gainful employment, and sentenced defendant within the statutory range. See 720 ILCS 5/12-13(b)(1) (West 2008) (criminal sexual assault is a Class 1 felony); 730 ILCS 5/5-4.5-30(a) (West 2008) (Class 1 felonies carry a sentence of between 4 and 15 years' imprisonment); 720 ILCS 5/12-15(d) (West 2008) (criminal sexual abuse is a Class 4 felony); 730 ILCS 5/5-4.5-45(a) (West 2008) (Class 4 felonies carry a sentence of between one and three years' imprisonment).

¶ 13 Copies of counsel's motion and brief were mailed to defendant. Defendant was also informed that he may file with this court a written explanation of why he thinks there are meritorious issues in his appeal. Defendant has not responded.

¶ 14 To comply with *Anders*, we have carefully examined the record and counsel's motion and brief. From our review, we agree with counsel and conclude that there are no issues of arguable

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merit on appeal. We, therefore, grant counsel's motion for leave to withdraw as appointed counsel on appeal.

¶ 15 The judgment of the circuit court of Cook County is affirmed in accordance with Supreme Court Rule 23(c)(2), (4) (Apr. 1, 2018).

¶ 16 Affirmed.