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DISTRICT II

March 13, 2024

To:

Hon. Mark T. Slate
Circuit Court Judge
Electronic Notice

Amy Thoma
Clerk of Circuit Court
Green Lake County Courthouse
Electronic Notice

Kathleen A. Lindgren
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

Tylor J. Kahn #665021
Fox Lake Correctional Inst.
P.O. Box 147
Fox Lake, WI 53933

You are hereby notified that the Court has entered the following opinion and order:

2023AP1750-CRNM	State of Wisconsin v. Tylor J. Kahn (L.C. #2017CF19)
2023AP1751-CRNM	State of Wisconsin v. Tylor J. Kahn (L.C. #2018CF70)

Before Gundrum, P.J., Neubauer and Lazar, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Tylor J. Kahn appeals his judgments of conviction in these consolidated matters, entered after his probation was revoked in both cases referenced above. His appellate counsel, Kathleen A. Lindgren, has filed no-merit reports pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2021-22).¹ Kahn was advised of his right to file responses, but he did not do so. Upon this court's independent review of the record, as required by *Anders*, and

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

counsel's reports, we conclude that there is no issue of arguable merit for appeal. We therefore summarily affirm the judgments.

In September 2017, Kahn pled no contest to four felony burglary charges, as a party to a crime. Numerous other theft and burglary charges were dismissed but read in for sentencing purposes. Kahn received a withheld sentence and probation on each of the four counts.

In December 2019, Kahn pled no contest to one count of possession of narcotics and one count of possession of drug paraphernalia, both as a repeater. He again received a withheld sentence and probation on both counts. Kahn's probation was extended twice, in November 2020 and November 2021, for failure to pay restitution and the court costs imposed.

Kahn's probation was revoked in October 2022 for a number of violations, primarily involving drugs, including an allegation that he sold fentanyl to an individual who died as a result. A hearing for sentencing after revocation was held in February 2023. For the case with the four burglary charges, the circuit court sentenced Kahn to consecutive three-year sentences for each count, bifurcated as one and one-half years of initial confinement followed by one and one-half years of extended supervision. For the case with the drug charges, the court sentenced Kahn to sixty-day sentences for each count, concurrent with each other but consecutive to his other sentences. This no-merit appeal follows.

An appeal from a judgment imposing sentence after probation is revoked does not bring the underlying conviction before us. See *State v. Drake*, 184 Wis. 2d 396, 399, 515 N.W.2d 923 (Ct. App. 1994). Additionally, the validity of the revocation itself is not the subject of this appeal. See *State ex rel. Flowers v. DHSS*, 81 Wis. 2d 376, 384, 260 N.W.2d 727 (1978) (probation revocation independent from underlying criminal action); see also *State ex rel.*

Johnson v. Cady, 50 Wis. 2d 540, 550, 185 N.W.2d 306 (1971) (judicial review of probation revocation is by petition for certiorari in circuit court). This court’s review is therefore limited to whether the circuit court properly exercised its sentencing discretion.

The circuit court’s duty when imposing a sentence after revocation is the same as its duty at the original sentencing. See *State v. Wegner*, 2000 WI App 231, ¶7 n.1, 239 Wis. 2d 96, 619 N.W.2d 289. The record reflects that the circuit court properly performed that duty here, considering relevant sentencing objectives and factors as required. See *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197; *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. In particular, the court noted Kahn’s “substantial” criminal record, which it observed stemmed from his substance abuse issues.

Furthermore, the sentences imposed are within the statutory maximums for all of the underlying offenses in both matters. They are thus presumed not to be unduly harsh or unconscionable. See *State v. Grindemann*, 2002 WI App 106, ¶32, 255 Wis. 2d 632, 648 N.W.2d 507.

Our independent review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit reports, affirms the judgments of conviction, and discharges appellate counsel of the obligation to represent Kahn further in this appeal.

Upon the foregoing,

IT IS ORDERED that the judgments are summarily affirmed. See WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Kathleen A. Lindgren is relieved from further representing Tylor J. Kahn in this appeal. *See* WIS. STAT. RULE 809.32(3).

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

Samuel A. Christensen
Clerk of Court of Appeals