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DISTRICT IV

August 29, 2013

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

2012AP132-CRNM State of Wisconsin v. Jason Allen Lulich (L.C. #2009CM671)

Before Lundsten, J.

Jason Lulich appeals a judgment sentencing him to jail following the revocation of his probation on three misdemeanor charges. Attorney Donna Hintze has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2011-12);¹ *Anders v. California*, 386 U.S. 738, 744 (1967); *State ex rel. McCoy v. Wisconsin Court of Appeals*, 137

¹ All further references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

Wis. 2d 90, 403 N.W.2d 449 (1987), *aff'd*, 486 U.S. 429 (1988). The no-merit report addresses the circuit court's exercise of its sentencing discretion. Lulich was sent a copy of the report, but has not filed a response. Upon reviewing the entire record, as well as the no-merit report, we conclude that there are no arguably meritorious appellate issues.

We first note that an appeal from a sentence following revocation does not bring an underlying conviction before this court. *State v. Drake*, 184 Wis. 2d 396, 399, 515 N.W.2d 923 (Ct. App. 1994). Nor can an appellant challenge the validity of any probation revocation decision in this proceeding. *See State ex rel. Flowers v. DHSS*, 81 Wis. 2d 376, 384, 260 N.W.2d 727 (1978) (probation revocation is independent from the 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 way of certiorari to the court of conviction). The only potential issue for appeal is the circuit court's imposition of sentence following revocation.

Our review of a sentence determination begins "with the presumption that the trial court acted reasonably, and the defendant must show some unreasonable or unjustifiable basis in the record for the sentence." *State v. Krueger*, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). Here, the record shows that Lulich was afforded the opportunity to review the revocation materials and to address the court prior to sentencing. The circuit court considered the standard sentencing factors and explained their application to this case. *See generally State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. The court's discussion emphasized the number of chances that Lulich had been given, his continuing failure to abide by the rules, and his failure to recognize the relationship between his substance abuse issues and involvement in the criminal justice system. The court concluded that a significant amount of jail time was required to protect the public and to impress upon Lulich the need to follow the rules of society.

The court then sentenced Lulich to consecutive terms of six months on the theft count, three months on the criminal damage to property count, and nine months on the bail jumping count, all with Huber release privileges for work and treatment. The court also ordered that restitution be converted to a civil judgment, and awarded 60 days of sentence credit.

The sentences imposed were within the applicable penalty ranges. *See* WIS. STAT. §§ 943.20(1)(a) and (3)(a) (classifying theft of less than \$2500 as a Class A misdemeanor); 943.01(1) (classifying criminal damage to property as a Class A misdemeanor); 946.49(1)(a) (classifying bail jumping on a misdemeanor charge as a Class A misdemeanor); and 939.51(3)(a) (providing maximum jail term of 9 months for Class A misdemeanors) (all 2007-08 Stats.). The cumulative eighteen months here amounted to two-thirds of Lulich's maximum exposure.

There is a presumption that a sentence “well within the limits of the maximum sentence” is not unduly harsh, and the sentences imposed here were not “so excessive and unusual and so disproportionate to the offense[s] committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances.” *State v. Grindemann*, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507 (quoted sources omitted).

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment. *See State v. Allen*, 2010 WI 89, ¶¶81-82, 328 Wis. 2d 1, 786 N.W.2d 124. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

IT IS ORDERED that the judgment sentencing the defendant after revocation is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Donna Hintze is relieved of any further representation of Jason Lulich in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane Fremgen
Clerk of Court of Appeals