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DISTRICT IV

December 4, 2013

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

2012AP2537-CRNM State of Wisconsin v. Christopher Anthony Jordan-Davis
(L.C. # 2008CF2811)

Before Blanchard, P.J., Sherman and Kloppenburg, JJ.

Attorney Shelley Fite, appointed counsel for Christopher Jordan-Davis, has filed a no-merit report seeking to withdraw as appellate counsel. *See Anders v. California*, 386 U.S. 738, 744 (1967) and WIS. STAT. RULE 809.32 (2011-12).¹ The no-merit report addresses the validity of the sentence imposed by the circuit court following revocation. Jordan-Davis was provided a copy of the report, but has not filed a response. Upon independently reviewing the entire record,

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

as well as the no-merit report, we agree with counsel's assessment that there are no arguably meritorious appellate issues. Accordingly, we affirm.

In January 2009, Jordan-Davis was convicted of robbery with the use of force, and the court withheld sentence and imposed seven years of probation with one year of conditional jail time. In November 2011, the Department of Corrections (DOC) revoked Jordan-Davis's probation. The court sentenced Jordan-Davis to five years of initial confinement followed by five years of extended supervision.

The appeal in this case from the sentence following revocation 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 probation revocation itself is not before us in this appeal. 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 petition for certiorari in the circuit court). The only potential appellate issues at this point in the proceedings relate to sentencing 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 complained of."² *State v. Krueger*, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). Here, following revocation, the DOC recommended five years of initial

² A circuit court's duty at sentencing after revocation is the same as its duty at an original sentencing. See *State v. Wegner*, 2000 WI App 231, ¶7 n.1, 239 Wis. 2d 96, 619 N.W.2d 289.

confinement and five years of extended supervision. The State and defense both recommended that the court follow the DOC's recommendation, but the State argued that the sentence should be consecutive to Jordan-Davis's other sentences while the defense argued for a concurrent sentence.

The court explained that it considered the facts pertinent to the standard sentencing factors and objectives, including the seriousness of the offense, Jordan-Davis's character, and the need to protect the public. *See State v. Gallion*, 2004 WI 42, ¶¶39-51, 270 Wis. 2d 535, 678 N.W.2d 197. The court sentenced Jordan-Davis to five years of initial confinement and five years of extended supervision, consecutive to Jordan-Davis's other sentences. The sentence was within the applicable penalty range. *See* WIS. STAT. §§ 943.32(1)(a), 939.50(3)(e), and 973.01(2)(b)5. The sentence was not so excessive or unduly harsh as to shock the conscience. *See State v. Grindemann*, 2002 WI App 106, ¶31, 255 Wis. 2d 632, 648 N.W.2d 507. Additionally, the court granted Jordan-Davis 577 days of sentence credit, on counsel's stipulation. We discern no erroneous exercise of the court's sentencing discretion.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. 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 of conviction is summarily affirmed. *See* WIS. STAT. RULE 809.21(1).

IT IS FURTHER ORDERED that Attorney Fite is relieved of any further representation of Jordan-Davis in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals