



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

January 8, 2014

To:

Hon. Bruce E. Schroeder
Circuit Court Judge
Kenosha County Courthouse
912 56th Street
Kenosha, WI 53140

Rebecca Matoska-Mentink
Clerk of Circuit Court
Kenosha County Courthouse
912 56th Street
Kenosha, WI 53140

Matthew S. Pinix
Law Office of Matthew S. Pinix, LLC
1200 East Capitol Drive, Suite 220
Milwaukee, WI 53211

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

Robert D. Zapf
District Attorney
Molinaro Bldg.
912 56th Street
Kenosha, WI 53140-3747

Dragisa Pavlovic
3635 S. Ft. Apache Rd., Ste. 200-9
Las Vegas, NV 89147-3436

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

2013AP790-CRNM State of Wisconsin v. Dragisa Pavlovic (L.C. # 2008CM634)

Before Neubauer, P.J.¹

Dragisa Pavlovic appeals from judgments entered both after an original sentencing hearing and following the revocation of his probation. Pavlovic's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Pavlovic received a copy of the report, was advised of his right to file a response, and has not responded. Upon consideration of the report and our independent review of the record,

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

we conclude that the judgment may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

In 2008, following a jury trial, Pavlovic was convicted of two counts of violating a restraining order and three counts of bail jumping. On that same day, as relevant to this no-merit appeal, the trial court withheld sentence on two of the bail jumping convictions (counts three and five) and ordered a two-year term of probation. The trial court withheld entry of judgment on counts one and four. Pavlovic did not file a notice of intent to pursue postconviction relief from this judgment.²

On June 9, 2009, following the revocation of Pavlovic's probation on counts three and five, the trial court imposed consecutive nine-month sentences.³ The court also entered judgment on counts one and four. On count one, the court withheld sentence in favor of probation. On count four, the trial court imposed a six-month jail sentence. Pavlovic filed a timely notice of intent from this sentencing hearing.

While serving the jail sentences imposed on June 9, 2009, Pavlovic engaged in a fight with another inmate. The probationary term ordered in connection with count one was revoked, and on October 30, 2009, the trial court ordered a nine-month jail sentence. Pavlovic again filed a timely notice of intent.

² As mentioned later in this opinion, Pavlovic eventually filed a postconviction motion and appeal concerning the May 6, 2008 proceedings. *State v. Pavlovic*, No. 2011AP2687-CR, unpublished slip op. (WI App August 1, 2012).

³ On the same day, Pavlovic was found guilty of additional charges following a court trial in circuit court case No. 2008CM634.

The no-merit report addresses the trial court's exercise of discretion at both the June 9, 2009, and October 30, 2009 sentencing hearings. With regard to the sentences imposed after probation revocation,⁴ Pavlovic's underlying convictions are not before us. See *State v. Drake*, 184 Wis. 2d 396, 399, 515 N.W.2d 923 (Ct. App. 1994). In addition, Pavlovic cannot challenge the probation revocation decision.⁵ See *State ex rel. Flowers v. DHSS*, 81 Wis. 2d 376, 384, 260 N.W.2d 727 (1978). Our review is limited to the trial court's sentence.

Likewise, as to counts one and four, the scope of our review of the June 9, 2009 hearing is limited to the trial court's exercise of sentencing discretion. Though the convictions on counts one and four did not become final until June 9, 2009, Pavlovic previously filed a postconviction motion in connection with this case challenging the jury trial proceedings as well as the trial court's decision to defer entry of judgment. The denial of Pavlovic's postconviction motion was reviewed on the merits and affirmed by this court. *State v. Pavlovic*, No. 2011AP2687-CR, unpublished slip op. (WI App August 1, 2012).

On review, we afford the sentencing court a strong presumption of reasonability, and if discretion was properly exercised, we follow "a consistent and strong policy against interference" with the court's sentencing determination. *State v. Gallion*, 2004 WI 42, ¶18, 270 Wis. 2d 535, 678 N.W.2d 197 (citation omitted). We will sustain a sentencing court's reasonable

⁴ These consist of counts three and five at the June 2009 hearing and count one at the October 2009 hearing.

⁵ Appointed counsel explains that arguably, at the time Pavlovic's probation was revoked on count one, his probationary term had not lawfully commenced. We agree that the propriety of the revocation decision is not within the scope of this appeal. Further, as stated by appointed counsel, Pavlovic previously asserted that he did not want a probationary disposition and waived his right to a revocation hearing. Finally, given that Pavlovic has completed serving his jail sentences, any issue concerning the revocation decision is likely moot.

exercise of discretion even if this court or another judge might have reached a different conclusion. *State v. Odom*, 2006 WI App 145, ¶8, 294 Wis. 2d 844, 720 N.W.2d 695. Sentencing after probation revocation is reviewed “on a global basis, treating the latter sentencing as a continuum of the” original sentencing hearing. *State v. Wegner*, 2000 WI App 231, ¶7, 239 Wis. 2d 96, 619 N.W.2d 289. Thus, at sentencing after probation revocation, we expect the court will consider many of the same objectives and factors that it is expected to consider at the original sentencing hearing. *See id.*

We agree with appellate counsel’s analysis and conclusion that there is no merit to any issue challenging the sentences imposed in this case. In fashioning its sentences, the court considered the seriousness of the offense, the defendant’s character and history, and the need to protect the public. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. At the June 9, 2009 sentencing hearing, the trial court acknowledged that Pavlovic had “many, many positives” but determined: “[T]he problem is that you’re doing some things that are not only illegal and socially unacceptable, but some of them are really frightening, I think. And you show no inclination to change.” The trial court identified deterrence as a key objective, *see Gallion*, 270 Wis. 2d 535, ¶41, and concluded that its sentence was necessary for punishment and to deter Pavlovic and “other people who would act as you have.”

At the October 30, 2009 sentencing after probation revocation on count one, the trial court again acknowledged that Pavlovic possessed some positive qualities, but explained that the court’s perspective had changed as Pavlovic’s behavior continued:

This man seems to be truly devoted to his children and, I, I think, too, he’s devoted in a certain sense to his wife and I think that that’s reflected in the original approach I took to the case.

Unfortunately I have come to learn that he's—and I don't like to use this term because it's overused I think in the area of domestic violence—but he's the classical controlling individual, and that's part of the problem that's brought in here today.

Once again, he just doesn't want to do what's required of him by either the law or the Court and he, he's going to do it his way

....

While the court characterized Pavlovic as “respectful” in the courtroom and as having a “great work record,” it observed that he was also “controlling of everybody, and unfortunately there are violent aspects to it.” The court explained that Pavlovic “has had plenty of chances and he's just persisted with the same kind of conduct,” and had given various people cause for concern over his future propensity for harm. The trial court determined that the maximum sentence of nine months was necessary in order to protect the public. The record reveals that the trial court's discretionary sentence had a rational and explainable basis. *See State v. Gallion*, 270 Wis. 2d 535, ¶76 (citation omitted). Additionally, the sentences imposed on June 9, 2009, and on October 30, 2009, were within the range authorized by law, *see State v. Scaccio*, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449, and were not so excessive as to shock the public's sentiment, *see Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the judgment, and discharges appellate counsel of the obligation to represent Pavlovic further in this appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Matthew S. Pinix is relieved of further representation of Dragisa Pavlovic in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals