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DISTRICT IV

March 19, 2014

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

2013AP260-CRNM State of Wisconsin v. Stephen G. Lippold (L.C. #2011CM1794)

Before Higginbotham, J.¹

Stephen Lippold appeals a judgment sentencing him to jail following the revocation of his probation on two counts of issuing a worthless check. Attorney Martha Askins has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32; *Anders v. California*, 386 U.S. 738, 744 (1967); *State ex rel. McCoy v. Wisconsin Court of Appeals*, 137 Wis. 2d 90, 403 N.W.2d 449 (1987), *aff'd*, 486 U.S. 429. The no-merit report addresses the

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.

legality of the sentence and the court's exercise of discretion. Lippold 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 trial 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 Lippold was afforded the opportunity to comment on the revocation materials and to address the court prior to sentencing. The trial 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 characterized Lippold as a liar and a thief, and explained that a jail sentence was necessary both to protect the public and to impress upon Lippold the expensive “cost of doing business” by conning people.

The court then sentenced Lippold to consecutive terms of five months in jail on each count, with forty-one days of sentence credit, and ordered that the outstanding restitution be

converted to a civil judgment. The sentences imposed were within the applicable penalty range, and constituted about fifty-five percent of the maximum exposure Lippold faced. *See* WIS. STAT. §§ 943.24(1) (classifying issuance of worthless check as a Class A misdemeanor); 939.51(3)(a) (setting maximum penalty of nine months of imprisonment for a Class A misdemeanor).

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 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, 255 Wis. 2d 632, 648 N.W.2d 507 (quoting other sources).

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 Martha Askins is relieved of any further representation of Lippold in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane Fremgen
Clerk of Court of Appeals