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WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

April 9, 2014

To:

Hon. S. Michael Wilk
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

Kaitlin A. Lamb
Assistant State Public Defender
735 N. Water St., Ste. 912
Milwaukee, WI 53202

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

Monica L. Spann
4325 E. Walter Ave.
Las Vegas, NV 89104

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

2013AP2595-CRNM State of Wisconsin v. Monica L. Spann (L.C. # 2006CM1519)

Before Brown, C.J.¹

Monica L. Spann appeals from a judgment sentencing her after revocation of her probation for disorderly conduct, resisting an officer, obstructing an officer, and three counts of misdemeanor bail jumping. Spann's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Spann received a copy of the report, was advised of her right to file a response, and has elected not to do so. After

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

reviewing the record and counsel's report, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment. RULE 809.21.

The no-merit report addresses whether the circuit court properly exercised its discretion in imposing its sentence after revocation. The circuit court's duty at sentencing after probation revocation is the same as its duty at the original sentencing. *State v. Wegner*, 2000 WI App 231, ¶7 n.1, 239 Wis. 2d 96, 619 N.W.2d 289.

Here, the record reveals that the circuit court's sentencing decision had a "rational and explainable basis." See *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (citation omitted). In imposing an aggregate sentence of nine months in jail and a total fine of \$600, the court considered the seriousness of the offenses, Spann's character, and the need to protect the public. See *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The sentence imposed, which was well within the statutory maximum, does not "shock public sentiment and violate the judgment of reasonable people concerning what is right and proper." See *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We agree with counsel that a challenge to Spann's sentence would lack arguable merit.²

² The circuit court did not make a finding regarding Spann's ability to pay the total fine of \$600. See *State v. Ramel*, 2007 WI App 271, ¶15, 306 Wis. 2d 654, 743 N.W.2d 502 (stating that it is necessary for a sentencing court to determine whether a defendant has the ability to pay a fine if the court intends to impose one). However, as noted by counsel, the record contains facts that indicate that Spann had the ability to pay the fine. Consequently, we are satisfied that this does not present a potentially meritorious issue for appeal.

Our independent review of the record does not disclose any potentially meritorious issue for appeal.³ Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report and relieve Attorney Kaitlin A. Lamb of further representation in this matter.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Kaitlin A. Lamb is relieved of further representation of Spann in this matter.

Diane M. Fremgen
Clerk of Court of Appeals

³ Any challenge to the underlying convictions is outside the scope of this appeal. *See State ex rel. Marth v. Smith*, 224 Wis. 2d 578, 582 n.5, 592 N.W.2d 307 (Ct. App. 1999).

