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DISTRICT IV

April 4, 2014

To:

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

2012AP2716-CRNM State of Wisconsin v. Jamar Lee Johnson (L.C. # 2011CF2572)

Before Kloppenburg, J.¹

Attorney William Schmaal, appointed counsel for Jamar Johnson, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Counsel provided Johnson with a copy of the report, and both counsel and this court advised Johnson of his right to file a response. Johnson has not responded. We conclude that this case is

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.

appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We conclude there is no arguable merit to any issue that could be raised on appeal.

Johnson pled no contest to misdemeanor counts of battery as an act of domestic abuse and knowingly violating a domestic abuse order. The circuit court withheld sentence and placed Johnson on probation for three years on each count.

In our order of December 3, 2013, we directed appellant's counsel to review whether the maximum probation term on one of the misdemeanor counts was two years, rather than the three years that was imposed. Counsel responded that he believes the probation term issue is moot because Johnson's probation was revoked in November 2013, before the possible two-year maximum was reached. We requested further clarification from counsel on two points.

The first clarification was on whether Johnson's probation was revoked on *both* counts. Counsel provided us with a copy of a memorandum from a probation agent to the circuit court recommending specific sentences on each of the counts in this case. Counsel infers from the memorandum that probation was revoked on both counts. We will accept that inference.²

The second clarification was on whether Johnson petitioned for certiorari review of the revocation decision. Counsel informs us that Johnson's attorney in circuit court confirms that Johnson did not petition for certiorari. Therefore, for these reasons, we conclude that the issue of

² Although we accept the inference, we are somewhat puzzled by the date on the memorandum, which states that the defendant's probation has been revoked, but appears to have been written a month before the October 4, 2013, date that the revocation order states was the date on which the Division of Hearings and Appeals determined Johnson had violated the conditions of probation.

the potentially excessive probation term is moot because Johnson was revoked from that probation term before the correct limit was reached.

Beyond that issue, the no-merit report addresses whether Johnson's pleas were entered knowingly, voluntarily, and intelligently. The report acknowledges that the plea colloquy was deficient in certain respects under *State v. Bangert*, 131 Wis. 2d 246, 255-73, 389 N.W.2d 12 (1986) and WIS. STAT. § 971.08. However, the no-merit report further asserts that, based on counsel's communication with Johnson, counsel does not believe Johnson can make a good faith allegation that he did not understand the required information. Johnson has not responded to the no-merit report to dispute that assertion and explain why he can make the necessary allegations. Accordingly, we conclude that there is no arguable merit to this issue.

The no-merit report addresses whether the circuit court erroneously exercised its sentencing discretion. The standards for the circuit court and this court on sentencing issues are well established and need not be repeated here. See *State v. Gallion*, 2004 WI 42, ¶¶17-51, 270 Wis. 2d 535, 678 N.W.2d 197. In this case, the court imposed the probation term jointly recommended by the parties. Because the court imposed the jointly recommended sentence, there is no merit to contesting the sentence on appeal. *State v. Scherreiks*, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989).

Our review of the record discloses no other potential issues for appeal.

Therefore,

IT IS ORDERED that the judgment of conviction is summarily affirmed. See WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Schmaal is relieved of further representation of Johnson in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals