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DISTRICT II

May 7, 2014

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

2014AP254-CRNM State of Wisconsin v. Rashad A. Greenwood (L.C. #2010CF1352)

Before Brown, C.J., Neubauer, P.J., and Gundrum, J.

Rashad A. Greenwood appeals from a judgment sentencing him after revocation of his probation. His appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2011-12)¹ and *Anders v. California*, 386 U.S. 738 (1967). Greenwood received a copy of the report advising him of his right to file a response; he has not done so. Upon consideration of the report and our independent review of the record as mandated by *Anders* and RULE 809.32, we conclude there is no arguable merit to any issue that could be raised on appeal. The judgment

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

thus may be summarily affirmed. *See* WIS. STAT. RULE 809.21. We affirm the judgment and relieve Attorney Dustin C. Haskell of further representing Greenwood in this matter.

In February 2011, after pleading guilty, Greenwood was convicted and sentenced to nine months in jail for carrying a concealed weapon, and given a withheld sentence and placed on two years' probation for felony bail jumping. A second count of felony bail jumping and one count of possessing marijuana, second or subsequent offense, were dismissed and read in. Greenwood did not seek postconviction relief or file a direct appeal.

In March 2013, Greenwood's probation was revoked upon allegations that he violated his terms of probation by possessing and using marijuana and possessing drug paraphernalia. Greenwood admitted that he used and sold the drug while on probation. The same court sentenced Greenwood to three years' initial confinement plus two years' extended supervision. This no-merit appeal followed.

The no-merit report addresses whether the court erroneously exercised its discretion in sentencing Greenwood post-revocation. Sentencing lies within the sound discretion of the trial court, and a strong policy exists against appellate interference with that discretion. *See State v. Haskins*, 139 Wis. 2d 257, 268, 407 N.W.2d 309 (Ct. App. 1987). The original sentencing and the sentencing after probation is revoked are reviewed on a global basis, "treating the latter sentencing as a continu[ation] of the first." *State v. Wegner*, 2000 WI App 231, ¶7, 239 Wis. 2d 96, 619 N.W.2d 289.

At the original sentencing, the court noted the gravity of the offenses of carrying a concealed gun and possessing an illegal drug. It considered both the positives of Greenwood's character, such as his efforts to better himself and take care of his children, and the negatives,

such as not conforming his behavior to the law. It considered what sentence would best serve Greenwood's and the community's needs. These primary sentencing factors properly were the focus of the original sentencing hearing. *See State v. Brown*, 2006 WI 131, ¶27, 298 Wis. 2d 37, 725 N.W.2d 262

After revocation, the court focused more on Greenwood's behavior. *See id.* The court noted that it originally had stayed his sentence and granted his request for probation in reliance on Greenwood's word that he was motivated and ready to change his ways. The court expressly identified four "*Gallion*" objectives as being most important. *See State v. Gallion*, 2004 WI 42, ¶41, 270 Wis. 2d 535, 678 N.W.2d 197. It considered the amount and nature of Greenwood's previous and continuing criminal activity and that probation had proved ineffective. The court noted his character—that he had not honored his word, had continued to sell and use marijuana while on probation, had picked up new charges for identity theft and uttering a forgery, and was setting a poor example for his children. The court considered the need to protect the public from his disregard of the laws, and punishment, or the need to hold him accountable. These are valid sentencing objectives. *See id.*, ¶40 & n.10. Greenwood's five-year sentence, when measured against his six-year, nine-month exposure, cannot be said to be so excessive or unusual as to shock public sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). Because the court's discretionary decision had a "rational and explainable basis," *Gallion*, 270 Wis. 2d 535, at ¶¶39, 76 (citation omitted), there would be no arguable merit to a challenge to the sentence.

The report correctly states that Greenwood may not challenge the underlying convictions in this appeal from sentencing after revocation of probation. *See State v. Tobey*, 200 Wis. 2d 781, 784, 584 N.W.2d 95 (Ct. App. 1996); *State v. Drake*, 184 Wis. 2d 396, 399, 515 N.W.2d

923 (Ct. App. 1994). He also may not challenge the validity of the probation revocation decision. See *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); cf. *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). Our review of the record discloses no other potential issues for appeal.

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 Dustin C. Haskell is relieved of further representing Greenwood in this matter.

Diane M. Fremgen
Clerk of Court of Appeals