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 III/II

May 21, 2014

To:

Hon. Gerald L. Wright
Circuit Court Judge
Sawyer County Courthouse
10610 Main Street, Ste. 244
Hayward, WI 54843

Karen Nord
Clerk of Circuit Court
Washburn County Courthouse
P.O. Box 339
Shell Lake, WI 54871

Thomas H. Frost
Special Prosecutor
P.O. Box 344
Shell Lake, WI 54871

William E. Schmaal
Asst. State Public Defender
P.O. Box 7862
Madison, WI 53707-7862

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

Gregory S. Rice 380618
Stanley Corr. Inst.
100 Corrections Drive
Stanley, WI 54768

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

2013AP1852-CRNM State of Wisconsin v. Gregory S. Rice (L.C. #1999CF25)

Before Brown, C.J., Reilly and Gundrum, JJ.

Gregory S. Rice appeals from a judgment imposing sentence after the revocation of his probation. Rice's 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). Rice received a copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the no-merit report and an independent review of the record, we conclude that

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

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 1999, following a conviction for one count of first-degree sexual assault of a child contrary to WIS. STAT. § 948.02(1), the trial court withheld sentence and ordered a twenty-year term of probation. On February 15, 2013, following the revocation of his probation, the trial court imposed a fifteen-year indeterminate sentence.[2] Pursuant to a motion filed by postconviction counsel, the trial court entered an order concluding that Rice was entitled to 927 days of sentence credit under WIS. STAT. § 973.155, and the clerk entered an amended judgment of conviction.

Appellate counsel's no-merit report addresses whether the trial court properly exercised its discretion at the sentencing hearing after revocation. Because this matter is before us following sentencing after probation revocation, Rice's underlying conviction is not before us. *See* ***State v. Drake***, 184 Wis. 2d 396, 399, 515 N.W.2d 923 (Ct. App. 1994). In addition, Rice cannot challenge the probation revocation decision. *See* ***State ex rel. Flowers v. H&SS Dep't***, 81 Wis. 2d 376, 384, 260 N.W.2d 727 (1978). Our review is limited to the trial court's sentencing discretion.

Sentencing after probation revocation is reviewed "on a global basis treating the latter sentencing as a continuum of the" original sentencing hearing. *See* ***State v. Wegner***, 2000 WI App 231, ¶7, 239 Wis. 2d 96, 619 N.W.2d 289. Thus, at sentencing after probation revocation,

[2] Rice filed a request for judicial substitution and a new judge presided at the sentencing hearing following his 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.*** Where, as here, different judges presided over the original sentencing and the sentencing after revocation hearings, the new judge should familiarize him or herself with the entire record. *See* ***State v. Walker***, 2008 WI 34, ¶3, 308 Wis. 2d 666, 747 N.W.2d 673; ***State v. Reynolds***, 2002 WI App 15, ¶9, 249 Wis. 2d 798, 643 N.W.2d 165 (2001).

We agree with appellate counsel's analysis and conclusion that there is no arguably meritorious challenge to the sentence imposed after revocation. The judge presiding over the sentencing after revocation indicated that he had reviewed the original presentence investigation report (PSI) and sentencing hearing transcript, as well as the revocation packets submitted in connection with both the present probation revocation and an earlier 2010 revocation attempt. The trial court made frequent reference to these documents, and the record establishes that the court properly familiarized itself with the particulars of Rice's case prior to sentencing.

Additionally, the record reveals that the trial court's discretionary sentence had a rational and explainable basis. ***State v. Gallion***, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197. In imposing its sentence, the trial court considered the seriousness of the offense, Rice's character, and the need to protect the public. ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. In terms of the gravity of the offense, the postrevocation court considered the original court's characterization of its severity:

> At the original sentencing hearing, the Court acknowledged that in the continuum of this type of sexual offense, the offenses that are covered by this particular statute, this was probably in the low end of that, which was one significant reason that the Court did put Mr. Rice on probation with a year in jail.

The postrevocation sentencing court also noted that it had not received any updated "information indicating that the victim of this offense was continuing to have serious psychological, emotion problems," and that if it had received such information, "the Court would have no difficulty whatsoever incarcerating Mr. Rice for at least 20 years."

As to Rice's character, the trial court acknowledged that when sober, Rice was a "good, hard worker and not much of a risk to the community." It characterized Rice as "not an inherently bad man. He is a man who has some deep underlying problems that need to be addressed. He needs to get a good handle on those problems." The court determined that Rice had "great difficulty maintaining sobriety" and that he was therefore in need of treatment in an institutional setting.

The court explained that comprehensive institutional treatment and postprison supervision were necessary to protect the public:

> It's clear that society needs to be protected from him by insuring that he gets the treatment that he needs, and the supervision that he is going to require to ensure that he complies and continues to comply with his treatment needs post prison.

The trial court concluded that "[t]o sentence him to anything less [than] ten years would undermine the original idea that he needed 20 years of supervision [,]" and determined that a fifteen-year indeterminate sentence was the minimum necessary to ensure that Rice successfully completed sex offender and substance abuse treatment, addressed his counseling needs, and was subject to a meaningful period of supervision following his parole. There is no arguably meritorious challenge to the postrevocation sentencing court's exercise of discretion. Additionally, Rice faced a maximum indeterminate sentence of forty years. Under the

circumstances of the case, the fifteen-year sentence imposed does not "shock public sentiment and violate the judgment of reasonable people concerning what is right and proper." ***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 Rice further in this appeal.

Upon the foregoing reasons,

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

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

Diane M. Fremgen
Clerk of Court of Appeals