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DISTRICT II

June 4, 2014

To:

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

2014AP59-CRNM	State of Wisconsin v. Kevin Lindsey (L.C. #2011CF961)
2014AP60-CRNM	State of Wisconsin v. Kevin Lindsey (L.C. #2011CF1257)

Before Neubauer, P.J., Reilly and Gundrum, JJ.

In these consolidated appeals, Kevin Lindsey appeals from judgments sentencing him after revocation of his probation for felony bail jumping and possession of THC as a second and subsequent offense. Lindsey's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2011-12)¹ and *Anders v. California*, 386 U.S. 738 (1967). Lindsey received a copy of the report, was advised of his right to file a response, and has elected not to do so. After

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

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

The no-merit report addresses whether the circuit court properly exercised its discretion in imposing its sentences 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. Where, as in the present case, the same judge presides at both proceedings, we will consider the original sentencing reasons to be implicitly adopted at the sentencing after revocation. *State v. Reynolds*, 2002 WI App 15, ¶8, 249 Wis. 2d 798, 643 N.W.2d 165 (2001).

Here, the records reveal that the circuit court's sentencing decision 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 sentences, which totaled five years of imprisonment, the court considered the seriousness of the offenses, Lindsey'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. Under the circumstances of the case, which were aggravated by Lindsey's new criminal charges and multiple rules violations,² the sentences do 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). We agree with counsel that a challenge to Lindsey's sentences would lack arguable merit.

Our independent review of the records 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 Hannah B. Schieber of further representation in these matters.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Hannah B. Schieber is relieved of further representation of Lindsey in these matters.

Diane M. Fremgen
Clerk of Court of Appeals

² Lindsey was charged with recklessly endangering safety, criminal damage to property, and disorderly conduct for throwing a piece of asphalt through a woman's window. He also violated his probation rules by failing to report to his agent for a scheduled appointment, failing to inform his agent of his whereabouts and activities, leaving Wisconsin without permission, and occupying a vehicle that was stolen.

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