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DISTRICT II

July 16, 2014

To:

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

2014AP406-CRNM State of Wisconsin v. Aaron J. Heyn (L.C. #2011CF202)

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

Aaron J. Heyn appeals from a judgment imposing a three-year sentence after the revocation of 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). Heyn 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 report and an independent review of the record, we conclude that the

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

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 2011, Heyn entered a no-contest plea to fifth-offense operating a motor vehicle while under the influence of a controlled substance. He was sentenced to three years' probation. His probation was revoked in April 2013. Heyn was sentenced to one year initial confinement and two years' extended supervision, with 317 days of sentence credit.

As the no-merit report explains, this appeal brings before the court only the sentence imposed after revocation. *See State v. Scaccio*, 2000 WI App 265, ¶10, 240 Wis. 2d 95, 622 N.W.2d 449. The only possible issue for appeal is whether the sentence was an erroneous exercise of discretion or excessive.

We agree with the no-merit analysis that the sentencing court properly exercised its discretion. The sentencing court recognized that the offense was not alcohol related but it still considered impaired driving while under the influence of prescription drugs very dangerous. It also acknowledged Heyn's position that he was not using alcohol in violation of his probation but just experienced difficulties with the ignition interlock device. The court observed that even while maintaining sobriety, Heyn seemed to fight with people and that while on supervision Heyn had engaged in behavior, particularly verbal threats and intimidating conduct directed at staff at a halfway house, that indicated Heyn needed to be supervised in the community to protect the public. The sentence was based on consideration of appropriate factors and sentencing objectives. *See State v. Gallion*, 2004 WI 42, ¶¶40-41, 270 Wis. 2d 535, 678 N.W.2d 197. The three-year sentence is well within the six-year maximum and cannot be deemed excessive. *See State v. Daniels*, 117 Wis. 2d 9, 22, 343 N.W.2d 411 (Ct. App. 1983).

Our review of the record discloses no other potential issues for appeal.² Accordingly, this court accepts the no-merit report, affirms the judgment, and discharges appellate counsel of the obligation to represent Heyn further in this appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney William E. Schmaal is relieved from further representing Aaron J. Heyn in this appeal. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals

² The no-merit report indicates that appointed counsel is not aware of any reasons outside of the record which would provide a basis for a “new factors” sentence modification motion.