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 II

July 23, 2014

To:

Hon. Robert J. Wirtz
Circuit Court Judge
Fond du Lac County Courthouse
160 South Macy Street
Fond du Lac, WI 54935

Eric Toney
District Attorney
Fond du Lac County
160 South Macy Street
Fond du Lac, WI 54935

Ramona Geib
Clerk of Circuit Court
Fond du Lac County Courthouse
160 South Macy Street
Fond du Lac, WI 54935

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

Jaymes Fenton
Fenton Law Office
403 S. Jefferson Street
Green Bay, WI 54301

Keith McGregor-Washington, #525258
Waupun Corr. Inst.
P.O. Box 351
Waupun, WI 53963-0351

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

2014AP783-CRNM State of Wisconsin v. Keith McGregor-Washington
(L.C. #2009CF122)

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

Keith McGregor-Washington appeals from a judgment sentencing him after revocation of his probation. His 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). McGregor-Washington was advised of his right to file a response, but has not exercised his right to do so. Upon consideration of the report and our independent review of the record as required by ***Anders*** and RULE 809.32, we

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

conclude that there is no arguable merit to any issue that could be raised on appeal and that this appeal may be disposed of summarily. *See* WIS. STAT. RULE 809.21. We therefore affirm the judgment, accept the no-merit report, and relieve Attorney Jaymes Fenton of further representing McGregor-Washington in this matter.

In 2009, McGregor-Washington was charged with nine counts of felony failure to pay child support, in violation of WIS. STAT. § 948.22(2). He entered no-contest pleas to four counts; the remaining five were dismissed and read in. Stating that the parties' joint recommendation "makes sense," the court accepted it, withheld sentence, placed McGregor-Washington on six years' probation for each of the four counts, to run concurrently, and imposed the conditions the parties proposed, one of which was to pay according to a schedule the $22,040.47 he owed for arrears, interest, and county expenses. If he missed a scheduled payment by more than thirty days, he would serve ninety days conditional time, but with work-release privileges "with out-of-county travel and transfer to any other county that will accept you."

In 2013, McGregor-Washington was revoked for violating eleven conditions of his probation. The same judge presided over the sentencing-after-revocation hearing. The court sentenced him to consecutive sentences of one year initial confinement and two years' extended supervision on each of the four counts. It also ordered restitution, an amount that had grown to $24,194.28. This no-merit appeal followed.

The no-merit report addresses whether the court erroneously exercised its discretion in sentencing McGregor-Washington after 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 revocation are reviewed on a global basis, "treating the latter sentencing as a continu[ation] of the first," especially where the same judge presides over both proceedings. ***State v. Wegner***, 2000 WI App 231, ¶¶7, 9, 239 Wis. 2d 96, 619 N.W.2d 289.

At the original sentencing, the child's mother told the court that, despite McGregor-Washington's almost nonexistent support efforts, whenever she asks him for items for the child, "he breaks his neck to make sure [the child] has what he needs." The court reminded McGregor-Washington he had legal obligations and his contributions had to go through the child support agency. Terming McGregor-Washington's debt "moderate" but still "manageable," the court cautioned him that, with continued nonpayment, he could "dig [him]self a horrible hole that at some point becomes nearly impossible to dig … out of." The court also warned that if he violated probation, "you're back here. I can sentence you and at that point[] I may not have a whole lot left to do other than to send you to prison." The primary sentencing factors—gravity of the offense, protection of the public, rehabilitative needs of the defendant, and deterrence—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 on the protection of the public.[2] It noted that, despite the time and chances afforded him, McGregor-Washington's debt had only grown, and reminded him that one who brings a child into the world has an obligation to support it. The weight the trial court assigns to each factor is a discretionary determination. ***Ocanas v. State***, 70 Wis. 2d

[2] The child's mother's victim impact statement informed the court before the original sentencing that supporting the child by herself brought "hard times" and, although employed, she had to turn to government assistance.

179, 185, 233 N.W.2d 457 (1975). As it had warned him at the original sentencing, the court ordered that McGregor-Washington serve time in prison. Considering the size of the debt, that five counts were dismissed and read in, and that he faced a fourteen-year term, McGregor-Washington's twelve-year sentence is not so disproportionate to the offense as to shock public sentiment. *See* ***id.*** Our independent review of the record reveals no other issue of arguable appellate merit.[3] Therefore,

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 Jaymes Fenton is relieved of further representing McGregor-Washington in this matter.

Diane M. Fremgen
Clerk of Court of Appeals

[3] McGregor-Washington was ordered to provide a DNA sample and pay the surcharge both when sentenced originally and again postrevocation. WISCONSIN STAT. § 973.047(1f), which obligates the trial court to require anyone convicted of a felony to provide a DNA specimen, makes no exception for persons who already have submitted one. ***State v. Jones***, 2004 WI App 212, ¶5, 277 Wis. 2d 234, 689 N.W.2d 917. We conclude that, in this case, the redundant charge was an oversight that does not present an arguable appellate issue.