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DISTRICT IV

November 17, 2014

To:

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

2013AP1698-CRNM State of Wisconsin v. Christopher B. Vine (L.C. # 2003CF66)

Before Lundsten, J.

Attorney Michelle Velasquez, appointed counsel for appellant Christopher Vine, has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32¹ and *Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit report addresses whether there would be arguable merit to a challenge to the sentence imposed by the circuit court following revocation of Vine's probation. Vine was sent a copy of the report, but has not filed a response.

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

Upon independently reviewing the entire record, as well as the no-merit report, we agree with counsel's assessment that there are no arguably meritorious appellate issues.

In February 2004, Vine was convicted of one count of felony child abuse, four counts of misdemeanor battery, and one count of disorderly conduct. The circuit court sentenced Vine to prison on the child abuse conviction, with a consecutive term of probation, sentences withheld, as to the misdemeanor convictions. In April 2010, Vine began serving his probation for the misdemeanor convictions.

In December 2012, the Department of Corrections (DOC) revoked Vine's probation. The court sentenced Vine to a total of twenty-one months of jail, and awarded 204 days of sentence credit. Vine then moved for additional sentence credit, entitling him to release from custody. On May 31, 2013, the circuit court entered an amended judgment of conviction and sentencing following revocation that awarded Vine a total of 333 days of sentence credit, and ordered Vine released immediately.

The appeal in this case from the sentence following revocation does not bring the underlying conviction before us. *See State v. Drake*, 184 Wis. 2d 396, 399, 515 N.W.2d 923 (Ct. App. 1994). Additionally, the validity of the probation revocation itself is not before us in this appeal. *See State ex rel. Flowers v. DHSS*, 81 Wis. 2d 376, 384, 260 N.W.2d 727 (1978) (probation revocation independent from underlying criminal action); *see also State ex rel. Johnson v. Cady*, 50 Wis. 2d 540, 550, 185 N.W.2d 306 (1971) (judicial review of probation revocation is by petition for certiorari in circuit court). The only potential appellate issues at this point in the proceedings relate to sentencing following revocation.

Our review of a sentence determination begins “with the presumption that the trial court acted reasonably, and the defendant must show some unreasonable or unjustifiable basis in the record for the sentence complained of.”² *State v. Krueger*, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). Here, following revocation, DOC recommended one year of jail time. The State recommended twenty-one months of jail, and the defense recommended nine months.

The court explained that it considered facts relevant to the standard sentencing factors and objectives, including Vine’s character and criminal history, the need to protect the public, and the seriousness of the offenses. See *State v. Gallion*, 2004 WI 42, ¶¶39-46 & nn.9-12, 270 Wis. 2d 535, 678 N.W.2d 197. The court followed the State’s recommendation and sentenced Vine to a total of twenty-one months of jail time. The sentences were within the applicable penalty ranges and were not so excessive or unduly harsh as to shock the conscience. See *State v. Grindemann*, 2002 WI App 106, ¶31, 255 Wis. 2d 632, 648 N.W.2d 507. Additionally, the court originally granted Vine 204 days of sentence credit, on counsel’s stipulation, and subsequently granted Vine’s motions for additional sentence credit and for immediate release. We discern no erroneous exercise of the court’s sentencing discretion.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction and sentencing after revocation. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

² A circuit court’s duty at sentencing after revocation is the same as its duty at an original sentencing. See *State v. Wegner*, 2000 WI App 231, ¶7 n.1, 239 Wis. 2d 96, 619 N.W.2d 289.

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

IT IS FURTHER ORDERED that Attorney Michelle Velasquez is relieved of any further representation of Christopher Vine in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals