



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 IV

March 25, 2015

To:

Hon. Mark L. Goodman
Circuit Court Judge, Branch II
Monroe County Courthouse
112 S Court Street
Sparta, WI 54656

Jan Moennig
Clerk of Circuit Court
Jackson County Courthouse
307 Main Street
Black River Falls, WI 54615-1776

Gerald R. Fox
District Attorney
Jackson County Courthouse
307 Main St.
Black River Falls, WI 54615-1744

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

Richard L. Yonko
Yonko Law Firm, LLC
P.O. Box 15
Menomonie, WI 54751

Lori A. Peterson
N9771 Castle Hill Road
Merrillan, WI 54754

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

2014AP72-CRNM State of Wisconsin v. Lori A. Peterson (L.C. # 2011CF175)

Before Blanchard, P.J., Lundsten, and Higginbotham, JJ.

Lori Peterson appeals a judgment sentencing her to prison following the revocation of her probation. Peterson had been placed on probation after she was found guilty, after a jury trial, of obtaining a controlled substance by fraud, contrary to WIS. STAT. § 961.43(1)(a) (2013-14).¹ Attorney Richard Yonko has filed a no-merit report seeking to withdraw as appellate counsel. See WIS. STAT. RULE 809.32; *Anders v. California*, 386 U.S. 738, 744 (1967); and *State ex rel.*

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

McCoy v. Wisconsin Court of Appeals, 137 Wis. 2d 90, 403 N.W.2d 449 (1987), *aff'd*, 486 U.S. 429. The no-merit report addresses the validity of the sentence imposed after revocation. Peterson was sent a copy of the report, but has not filed a response. Upon reviewing the entire record, as well as the no-merit report, we conclude that there are no arguably meritorious appellate issues.

We first note that an appeal from a sentence following revocation does not bring an underlying conviction before this court. *State v. Drake*, 184 Wis. 2d 396, 399, 515 N.W.2d 923 (Ct. App. 1994). Nor can an appellant challenge the validity of any probation revocation decision in this proceeding. *See State ex rel. Flowers v. DHSS*, 81 Wis. 2d 376, 384, 260 N.W.2d 727 (1978) (probation revocation is independent from the 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 way of certiorari to the court of conviction). The only potential issue for appeal is the trial court's imposition of sentence 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.” *State v. Krueger*, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). Here, the record shows that Peterson was afforded the opportunity to comment on the revocation materials and to address the court prior to sentencing. The trial court considered the standard sentencing factors and explained their application to this case. *See generally State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. Regarding the severity of the offense, the court stated that Peterson was “seriously out of control” and expressed concern over Peterson's continued drug seeking and drug using behaviors. The court also noted Peterson's history of drug addiction. With respect to the defendant's character and rehabilitative needs, the

court stated that its primary objective at the original sentencing hearing had been to afford her with an opportunity to rehabilitate herself. However, the court noted that, just over a month after she was placed on probation, Peterson already was in revocation proceedings. The court concluded that a prison term was necessary to protect the community and to allow Peterson to receive a psychological evaluation and treatment for her drug problem.

The court then sentenced Peterson to one year of initial confinement and three years of extended supervision. It imposed standard costs and conditions of supervision; found that Peterson was eligible for a risk reduction sentence or the Challenge Incarceration and Earned Release Programs; and awarded 125 days of sentence credit. The sentence imposed was within the applicable penalty range. *See* WIS. STAT. §§ 961.43(1)(a) and (2) (classifying obtaining a controlled substance by fraud as a Class H felony); 973.01(2)(b)8 and (d)5 (providing maximum terms of three years of initial confinement and three years of extended supervision for a Class H felony). There is a presumption that a sentence “well within the limits of the maximum sentence” is not unduly harsh, and the sentence imposed here was not “so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances.” *State v. Grindemann*, 2002 WI App 106, ¶¶31-32, 255 Wis.2d 632, 648 N.W.2d 507 (quoted sources omitted).

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment. *See State v. Allen*, 2010 WI 89, ¶¶81-82, 328 Wis. 2d 1, 786 N.W.2d 124. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

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

IT IS FURTHER ORDERED that Attorney Yonko is relieved of any further representation of Lori Peterson in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane Fremgen
Clerk of Court of Appeals