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DISTRICT II

April 1, 2015

To:

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

2014AP2292-CRNM State of Wisconsin v. Jason H. Andritsch (L.C. #2001CF261)

Before Brown, C.J., Reilly and Gundrum, JJ.

Jason H. Andritsch appeals from a judgment sentencing him after revocation of his probation for burglary. Andritsch's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2013-14)¹ and *Anders v. California*, 386 U.S. 738 (1967). Andritsch received a copy of the report, was advised of his right to file a response, and has elected not to do so. After reviewing the record and counsel's report, we conclude that there are no issues with

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

arguable merit for appeal. Therefore, we summarily affirm the judgment. WIS. STAT. RULE 809.21.

The no-merit report addresses whether the circuit court properly exercised its discretion in imposing its sentence 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, different judges presided over the original sentencing and the sentencing after revocation, the record should reflect that the circuit court familiarized itself with the particulars of the case at issue. *See State v. Walker*, 2008 WI 34, ¶3, 308 Wis. 2d 666, 747 N.W.2d 673; *State v. Reynolds*, 2002 WI App 15, ¶9, 249 Wis. 2d 798, 643 N.W.2d 165 (2001).

Here, the record reveals that the circuit court familiarized itself with the particulars of Andritsch's case.² Likewise, the record reveals that the 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 a sentence of ten years of imprisonment, the court considered the seriousness of the offense, Andritsch'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 Andritsch's lengthy criminal history and repeated violations of the rules of his supervision, the sentence imposed does not "shock public sentiment and violate the judgment of reasonable people concerning what is right and proper." *See Ocanas v.*

² At the outset of the sentencing after revocation hearing, the circuit court acknowledged that it had reviewed the revocation summary and warrant and the documents that accompanied it. The court also noted it had reviewed the presentence investigation report and the original sentencing transcript.

State, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We agree with counsel that a challenge to Andritsch's sentence would lack arguable merit.

Our independent review of the record 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 Andrea Taylor Cornwall of further representation in this matter.

Upon the foregoing reasons,

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 Andrea Taylor Cornwall is relieved of further representation of Andritsch in this matter.

Diane M. Fremgen
Clerk of Court of Appeals

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