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DISTRICT III

May 19, 2015

To:

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

2014AP2595-CRNM State of Wisconsin v. Dustin J. Pingel (L. C. #2010CF156)

Before Hoover, P.J., Stark and Hruz, JJ.

Counsel for Dustin Pingel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2013-14),¹ concluding there is no basis for challenging the sentence imposed after revocation of Pingel's probation. Pingel was informed of his right to respond to the report and has not responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude there is no arguable merit to any issue that could be raised on

appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

In January 2011, Pingel pleaded no contest to second-degree sexual assault of a child, as a repeater. The circuit court withheld sentence and imposed seven years and two months of probation, to run concurrently with a term of probation Pingel was already serving. Pingel's probation was later revoked and, out of a maximum possible forty-six-year sentence, the court imposed a twenty-five-year sentence, consisting of sixteen years' initial confinement and nine years' extended supervision, concurrent with Pingel's sentence in another case.

An appeal from a judgment imposing sentence after probation 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 the subject of 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). This court's review is therefore limited to whether the circuit court properly exercised its sentencing discretion.

There is no arguable merit to a claim that the circuit court improperly exercised its sentencing discretion. Before imposing a sentence authorized by law, the court considered the seriousness of the offense; Pingel's character, including his criminal history; the need to protect the public; and the mitigating circumstances Pingel raised. *See State v. Gallion*, 2004 WI 42,

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

¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. Under these circumstances, it cannot reasonably be argued that Pingel's sentence is so excessive as to shock public sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Our independent review of the record discloses no other potential issues for appeal.

Therefore,

IT IS ORDERED that the judgment is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Andrew H. Morgan is relieved of further representing Pingel in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals