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DISTRICT II

July 8, 2015

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

2015AP639-CRNM State of Wisconsin v. Brian I. Harris (L.C. #2011CF797)

Before Neubauer, P.J., Reilly, and Gundrum, JJ.

Brian I. Harris appeals from a judgment imposing a sentence after the revocation of probation. His appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2013-14)¹ and *Anders v. California*, 386 U.S. 738 (1967). Harris received a copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the report and an independent review of the record, we conclude that the judgment may be

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

summarily affirmed because the appeal is moot and there is no arguable merit to the one issue that could be raised on appeal. *See* WIS. STAT. Rule 809.21.

A jury convicted Harris of two felonies—burglary and possession of burglarious tools—and two misdemeanors—criminal damage to property and criminal trespass to a dwelling. He stands convicted as a repeat offender on each of the counts. On each count sentence was withheld and Harris was placed on probation for concurrent terms totaling thirty months. Harris failed to report to his probation agent, and about a month after sentencing, he was jailed. His probation was revoked November 15, 2013, approximately four months after sentencing. Sentencing after revocation was adjourned until the disposition of Harris’s petition for a writ of certiorari challenging the revocation. On June 26, 2014, Harris was sentenced by the same judge who originally sentenced him. The sentence imposed was 1021 days time served on the felonies and nine months time served on the misdemeanors.²

The no-merit report first suggests that the appeal may be moot because Harris has already completed the sentence.³ *See State ex rel. Jones v. Gerhardstein*, 135 Wis. 2d 161, 169, 400 N.W.2d 1 (Ct. App. 1986) (“An issue is moot when a determination is sought which can have no practical effect on a controversy.”). The appeal is moot. *See State v. Walker*, 2008 WI 34, ¶14,

² Harris’s postconviction motion to vacate mandatory DNA surcharges imposed under WIS. STAT. § 973.046(1r) as unconstitutional under the Ex Post Facto Clause was granted. Harris still remains responsible for the \$250 DNA surcharge imposed at the original sentencing on July 17, 2013, when the sentencing court also ordered that Harris provide a DNA sample.

³ An appeal from sentencing after revocation is limited to issues raised by the events of the resentencing hearing and the judgment entered as a result of that sentencing hearing. *State v. Scaccio*, 2000 WI App 265, ¶10, 240 Wis. 2d 95, 622 N.W.2d 449. An appeal taken from sentencing after revocation does not bring the original judgment of conviction before this court. *Id.* Harris’s appeal from the trial and original judgment of conviction is still pending in appeal No. 2014AP1767-CR.

308 Wis. 2d 666, 747 N.W.2d 673 (a challenge to a reconfinement order was moot because the defendant had completed the reconfinement term and the court’s decision would not affect the underlying controversy); *State v. Hoffman*, Nos. 2010AP1327-CR, 2010AP2036-CR, unpublished slip op. ¶¶6-7 (WI App Mar. 30, 2011) (appeal from sentence imposed after revocation of probation is moot because defendant served the entire sentence). “In the interest of judicial economy, moot cases are generally dismissed without discussion on the merits.” *State v. Leitner*, 2002 WI 77, ¶13, 253 Wis. 2d 449, 458-59, 646 N.W.2d 341.

Despite mootness and because only one potential issue exists for appeal, we have conducted the record review mandated by *Anders* upon commencement of a no-merit appeal and counsel’s motion to withdraw. The only potential issue is whether the sentence was an erroneous exercise of discretion or excessive. We agree with the no-merit analysis that the sentencing court properly exercised its discretion in imposing a time-served sentence. Accordingly, this court accepts the no-merit report, affirms the conviction, and discharges appellate counsel of the obligation to represent Harris further in this appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Dustin C. Haskell is relieved from further representing Brian I. Harris in this appeal. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals