



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

July 10, 2015

To:

Hon. Thomas E. Lister
Circuit Court Judge
Jackson County Courthouse
307 Main Street
Black River Falls, WI 54615

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

William E. Schmaal
Asst. State Public Defender
P.O. Box 7862
Madison, WI 53707-7862

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

William J. Kemp 101219
Stanley Corr. Inst.
100 Corrections Drive
Stanley, WI 54768

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

2013AP2757-CRNM State of Wisconsin v. William J. Kemp (L.C. # 2012CF126)

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

Attorney William Schmaal, appointed counsel for appellant William Kemp, has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2013-14)¹ and *Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit report addresses the validity of the sentence imposed by the circuit court following revocation. Kemp was sent a copy of the report, but has not filed a response. Upon independently reviewing the entire record,

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

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

In October 2012, Kemp was convicted of possession of THC, second or subsequent offense. The circuit court imposed three years of probation, with sentence withheld. In June 2013, the Department of Corrections revoked Kemp's probation. The court sentenced Kemp to eighteen months of initial confinement and twenty-four months of extended supervision.

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, the court explained that it considered facts relevant to the standard sentencing factors and objectives, including Kemp's character and criminal history, the need to

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.

protect the public, and the gravity of both the offense and the conduct leading to revocation. *See State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. The sentence was 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. The court also ordered Kemp's driver's license revoked for five years, *see* WIS. STAT. § 961.50(1), and ordered Kemp to pay the DNA surcharge if he had not already done so, *see State v. Long*, 2011 WI App 146, ¶¶8-9, 337 Wis. 2d 648, 807 N.W.2d 12. Additionally, the court granted Kemp sixty-three days of sentence credit, on counsel's stipulation. 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. 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 of conviction is summarily affirmed. *See* WIS. STAT. RULE 809.21.

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

Diane M. Fremgen
Clerk of Court of Appeals