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DISTRICT IV/II

October 7, 2015

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Randy J. Aime
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You are hereby notified that the Court has entered the following opinion and order:

2014AP1798-CRNM State of Wisconsin v. Randy J. Aime (L.C. # 2012CF30)

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

Randy Aime appeals from a judgment sentencing him after revocation of his probation for operating while intoxicated (4th offense in five years) contrary to WIS. STAT. § 346.63(1)(a) (2011-12).¹ Aime's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Aime received a copy of the report and was advised of his right to file a response. He has not done so. Upon consideration of the report

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

and an independent review of the record as mandated by *Anders* and RULE 809.32, we summarily affirm the judgment because there are no issues that would have arguable merit for appeal. WIS. STAT. RULE 809.21.

The no-merit report addresses whether the circuit court misused its sentencing discretion. We agree with appellate counsel that this issue does not have arguable merit for appeal.²

There would be no arguable merit to a challenge to Aime's sentence for fourth offense operating while intoxicated. 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. When, as here, the same judge presided over the original sentencing and the sentencing after revocation, the judge does not need to restate the reasons supporting the original sentencing. *Id.*, ¶9. We "consider the original sentencing reasons to be implicitly adopted." *Id.* The weight to be given the various factors is within the circuit court's discretion. *Cunningham v. State*, 76 Wis. 2d 277, 282, 251 N.W.2d 65 (1977). The discretion of the sentencing judge must be exercised on a "rational and explainable basis." *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (citation omitted).

The circuit court properly exercised its discretion at sentencing. The circuit court considered the gravity of Aime's crime, that Aime absconded from probation, that Aime needed substance abuse treatment and was not getting it, and that Aime needed to be rehabilitated in a confined setting. These are appropriate considerations. *State v. Ziegler*, 2006 WI App 49, ¶23,

² Any challenge to the underlying conviction for operating while intoxicated is outside the scope of this appeal. *State ex rel. Marth v. Smith*, 224 Wis. 2d 578, 582 n.5, 592 N.W.2d 307 (Ct. App. 1999). "[R]eview of probation revocation is by way of certiorari review to the court of conviction." *Id.* at 583.

289 Wis. 2d 594, 712 N.W.2d 76. The court's four-year sentence complied with WIS. STAT. § 973.01 relating to the imposition of a bifurcated sentence of confinement (two years) and extended supervision (two years). Sentence credit was properly awarded. There would be no arguable merit to a challenge to the sentence.

In addition to the issues discussed above, we have independently reviewed the record. Our independent review of the record did not disclose any potentially meritorious issue for appeal. 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, affirm the judgment of conviction and relieve Attorney Andrew Hinkel of further representation of Aime 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 Andrew Hinkel is relieved of further representation of Randy Aime in this matter.

Diane M. Fremgen
Clerk of Court of Appeals