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DISTRICT II

December 7, 2016

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

2015AP1289-CRNM State of Wisconsin v. Leo J. Turk (L.C. # 2014CM461)

Before Neubauer, C.J.¹

Leo Turk appeals from a judgment sentencing him after revocation of his probation. Turk's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2013-14) and *Anders v. California*, 386 U.S. 738 (1967). Turk 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 and an independent review of the record as mandated by *Anders* and RULE 809.32, we summarily

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

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 discretion in imposing a twelve-month sentence² after revocation of Turk's probation for disorderly conduct. We agree with appellate counsel that this issue does not have arguable merit for appeal.³

There would be no arguable merit to a challenge to Turk's sentence. 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'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.* In fashioning the sentence after revocation, the court considered Turk's character and history of other offenses and the need to protect the public. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The weight to be given the various factors was within the circuit court's discretion. *Cunningham v. State*, 76 Wis. 2d 277, 282, 251 N.W.2d 65 (1977). We conclude that the circuit

² Turk's sentence was enhanced because he was sentenced for a crime of domestic violence as a repeat offender. WIS. STAT. §§ 968.075(1)(a) and 939.62(1)(a).

³ Any challenge to the underlying conviction for disorderly conduct 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). Review of probation revocation is by way of certiorari review to the court of conviction. *Id.* at 583.

court properly exercised its discretion at sentencing. There would be no arguable merit to a challenge to the sentence.

Our independent review of the record does 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, and relieve Attorney Eric R. Pangburn of further representation of Leo Turk 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 Eric R. Pangburn is relieved of further representation of Leo Turk in this matter.

Diane M. Fremgen
Clerk of Court of Appeals