



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

April 7, 2017

To:

Hon. Elliott M. Levine
Circuit Court Judge
La Crosse County Courthouse
333 Vine Street
La Crosse, WI 54601

Pamela Radtke
Clerk of Circuit Court
La Crosse County Courthouse
333 Vine Street, Room 1200
La Crosse, WI 54601

Megan Sanders-Drazen
Asst. State Public Defender
P. O. Box 7862
Madison, WI 53707-7862

Jessica Skemp
Asst. District Attorney
333 Vine St., Room 1100
La Crosse, WI 54601

Criminal Appeals Unit
Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

Ricky T. Smith 439981
Stanley Corr. Inst.
100 Corrections Drive
Stanley, WI 54768

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

2016AP1725-CRNM	State of Wisconsin v. Ricky T. Smith (L.C. # 2014CF141)
2016AP1726-CRNM	State of Wisconsin v. Ricky T. Smith (L.C. # 2015CF181)

Before Higginbotham, Sherman and Blanchard, JJ.

Attorney Megan Sanders-Drazen has filed a no-merit report seeking to withdraw as appellate counsel for appellant Ricky Smith in these consolidated appeals. *See* WIS. STAT. RULE 809.32 (2015-16)¹ and *Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit report addresses the validity of the sentences imposed by the circuit court following revocation of Smith's probation. Smith was sent a copy of the report, but has not filed a response. Upon

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

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

In March 2014, Smith was convicted of possession of methamphetamine and obstructing an officer and placed on two years of probation, sentence withheld. In July 2015, Smith was convicted of delivering methamphetamine as a repeater and placed on three years of probation, sentence withheld. In January 2016, Smith's probation was revoked in both cases. The court sentenced Smith to a total of three years of initial confinement and three years of extended supervision. In August 2016, the circuit court granted Smith's postconviction motion to correct his sentence credit.

These consolidated appeals from the sentences following revocation do not bring the underlying convictions 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 revocations themselves are not before us in these appeals. *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 [circuit] 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, following revocation, the Department of Corrections (DOC) recommended five years of initial confinement and three years of extended supervision. The State recommended that the court follow DOC’s recommendation. The defense recommended one year of initial confinement and a lengthy period of extended supervision.

The court explained that it considered facts pertinent to the standard sentencing factors and objectives, including Smith’s character and criminal history, the seriousness of the offenses, and the need to protect the public. *See State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. The court sentenced Smith to three years of initial confinement and three years of extended supervision. The sentence was within the maximum Smith faced, and, given the facts of this case, 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. 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 judgments 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 judgments of conviction are summarily affirmed. *See* WIS. STAT. RULE 809.21.

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.

IT IS FURTHER ORDERED that Attorney Megan Sanders-Drazen is relieved of any further representation of Ricky Smith in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals