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**DISTRICT III**

May 2, 2017

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

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2016AP2060-CRNM      State of Wisconsin v. Amado Servais (L. C. No. 2012CF273)

Before Stark, P.J., Hruz and Seidl, JJ.

Counsel for Amado Servais has filed a no-merit report concluding there is no arguable basis for challenging the sentences imposed after revocation of Servais's probation. Servais filed a response contending he was sentenced on inaccurate information that his urinalysis tested positive for drugs and that Servais picked up children from school while under the influence of narcotics. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude there is no arguable basis for appeal.

In 2012, pursuant to a plea agreement, Servais entered no contest pleas to charges of false imprisonment, battery, possession of a controlled substance, and stalking. Other charges relating to domestic abuse were dismissed and read in for sentencing purposes. The court withheld sentence and placed Servais on probation on the false imprisonment, battery, and stalking charges, and imposed one year in jail as a condition of probation on the false-imprisonment charge. The court sentenced Servais to thirty days in jail on the controlled substance charge.

Servais's probation was revoked based on his absconding from supervision for more than one year, his use of narcotics, and driving under the influence of narcotics. At the sentencing after revocation hearing, Servais told the court he was on numerous medications for diabetes that produce false positives on urinalysis. He told the court he asked for a second urine test, but was denied the second test. He stated he was only taking prescribed medication. The sentencing court expressed doubt that diabetes medicine would account for the positive test results for amphetamines, opiates and methamphetamines identified in the urinalysis. The sentencing court specifically considered the seriousness of Servais's crimes, his character and the need to protect the public. The court noted Servais did not complete his AODA treatment, missed a number of appointments, and was discharged for lack of attendance. The court imposed consecutive sentences totaling four years' initial confinement and five years' extended supervision.

This court's review is limited to the sentences imposed on revocation of Servais's probation. To the extent Servais's response to the no-merit report could be construed as a challenge to the revocation decision, that issue is not properly before this court because any challenge to the revocation must be pursued through certiorari review. *See State ex rel. Johnson v. Cady*, 50 Wis. 2d 540, 549-50, 185 N.W.2d 306 (1971).

There is no arguable basis for arguing the sentence was excessive. The circuit court could have imposed consecutive sentences totaling more than ten years' imprisonment. The court considered the appropriate factors and the sentences were not arguably so excessive as to shock public sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

In his response to the no-merit report, Servais contends he was sentenced on false information regarding his drug use. He contends that, had a second lab test been available to the judge, the sentence would have been more lenient. He argues his urinalysis result was caused by prescription and over-the-counter medications rather than illegal drugs.

To establish a due process violation regarding an allegedly inaccurate basis for the sentence, a defendant must show both that the information the court considered was false and that the court relied on the false information. *State v. Tiepelman*, 2006 WI 66, ¶2, 291 Wis. 2d 179, 717 N.W.2d 1. The record shows Servais could not meet that test. Servais's violations of the terms of his probation, which reflected badly on his character, included absconding for more than one year. Servais failed to present any evidence in support of his claim that his positive urinalysis resulted from prescription and over-the-counter medication. In addition to the urinalysis, Servais's probation was revoked based on testimony from a witness the Division of Hearings and Appeals found credible that Servais used controlled substances. Finally, although the court mentioned Servais's drug use, the primary reasons given for the sentences were the seriousness of the offenses, his character, and the need to protect the public. *See State v. Harris*, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984).

Finally, the court properly awarded Servais 489 days of sentence credit toward the false imprisonment sentence. Because the court imposed a consecutive sentence on the stalking

charge, dual sentence credit is not available for that offense. *State v. Boettcher*, 144 Wis. 2d 86, 100, 423 N.W.2d 533 (1988).

Our independent review of the record discloses no other potential issue for appeal. Therefore,

IT IS ORDERED that the judgment of conviction is summarily affirmed. WIS. STAT. RULE 809.21 (2015-16).

IT IS FURTHER ORDERED that attorney Kara Mele is relieved of her obligation to further represent Servais in this matter. *See* WIS. STAT. RULE 809.32(3) (2015-16).

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*