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DISTRICT III

May 31, 2017

To:

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

2016AP1672-CRNM State v. Scott R. Meidam
2016AP1673-CRNM (L. C. Nos. 2015CM225; 2015CM268)

Before Stark, P.J.¹

Counsel for Scott Meidam has filed a no-merit report pursuant to WIS. STAT. RULE 809.32, concluding there is no basis for challenging the sentences imposed after revocation of Meidam's probation. Meidam was informed of his right to respond to the report and has not responded. Upon our independent review of the records as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude there is no arguable merit to any issue that could be raised on

¹ These appeals are decided by one judge pursuant to WIS. STAT. § 752.31(2) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

appeal. Therefore, we summarily affirm the judgments of conviction. *See* WIS. STAT. RULE 809.21.

On May 1, 2015, Meidam pleaded no contest to misdemeanor bail jumping and violating a harassment restraining order, both as a repeater, arising from two Outagamie County Circuit Court cases. The circuit court withheld sentence in both cases and placed Meidam on probation for two years. Meidam's probation was later revoked, and the circuit court imposed consecutive sentences resulting in a four-year term, consisting of two years' initial confinement and two years' extended supervision.²

Although the no-merit report addresses whether there is any arguable basis for challenging Meidam's pleas or the original sentences, an appeal from a judgment imposing sentence after probation 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 the subject of 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). This court's review is therefore limited to whether the circuit court properly exercised its sentencing discretion following the revocation of Meidam's probation.

² In *State v. Lasanski*, 2014 WI App 26, ¶11, 353 Wis. 2d 280, 844 N.W.2d 417, this court clarified that for a misdemeanor crime enhanced by a repeater penalty, the enhancement transforms the misdemeanor sentence into a sentence to the state prison, which then must be bifurcated.

There is no arguable merit to a claim that the circuit court improperly exercised its sentencing discretion. Before imposing the maximum sentences authorized by law, the court considered the seriousness of the offenses; Meidam's character, including his criminal history; the need to protect the public; and the mitigating circumstances Meidam raised. See *State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. It cannot reasonably be argued that Meidam's sentences are so excessive as to shock public sentiment. See *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Further, we agree with appellate counsel's conclusion that there is no arguable merit to a claim that the circuit court erred by denying Meidam's postconviction motion challenging the sentences imposed after probation revocation. Meidam argued that the circuit court erroneously exercised its discretion by sentencing Meidam as a repeater because the records were insufficient to establish Meidam's repeater status. In order to apply a repeater enhancer, qualifying prior convictions must either be admitted by the defendant or proved by the State beyond a reasonable doubt. See WIS. STAT. § 973.12(1); see also *State v. Hill*, 2016 WI App 29, ¶8, 368 Wis. 2d 243, 878 N.W.2d 709. Here, Meidam pleaded no contest to the charged offenses as repeaters, after the circuit court recited the past convictions forming the basis for the repeater allegation and advised Meidam that his conviction history subjected him to enhanced penalties under the repeater statute. Because Meidam was fully aware of the repeater charges and their consequences when he entered his no-contest pleas, Meidam's no-contest pleas constituted an admission of the repeater allegations. See *Hill*, 368 Wis. 2d 243, ¶26. Therefore, any claim that the circuit court erred by denying Meidam's postconviction challenge to the sentences on this ground would lack arguable merit.

Our independent review of the records discloses no other potential issues for appeal.

Therefore,

IT IS ORDERED that the judgments are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Mark A. Schoenfeldt is relieved of further representing Meidam in these matters. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published and may not be cited except as provided under WIS. STAT. RULE 809.23(3).

Diane M. Fremgen
Clerk of Court of Appeals