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DISTRICT II

October 25, 2017

To:

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

2017AP878-CRNM State of Wisconsin v. Nicole L. Romesburg (L.C. # 2014CF106)

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

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Nicole L. Romesburg appeals from a judgment sentencing her after revocation of her probation. Romesburg's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2015-16)¹ and *Anders v. California*, 386 U.S. 738 (1967). Romesburg received a copy

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

of the report, was advised of her right to file a response, and has elected not to do so. After reviewing the record and counsel's report, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment. *See* WIS. STAT. RULE 809.21.

Romesburg was convicted following no contest pleas to (1) possession of methamphetamine, (2) possession of narcotic drugs, (3) possession of THC, and (4) fleeing/eluding a traffic officer. The circuit court withheld sentence and placed Romesburg on probation for four years. Her probation was later revoked, and she appeared before the court for sentencing after revocation. There, the court imposed an aggregate sentence of three years of initial confinement and four years of extended supervision. This no-merit appeal follows.

The no-merit report addresses whether the circuit court properly exercised its discretion in imposing its sentence after revocation. The circuit court's duty at the sentencing after 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. Where, as in the present case, the same judge presides at both proceedings, we will consider the original sentencing reasons to be implicitly adopted at the sentencing after revocation. *State v. Reynolds*, 2002 WI App 15, ¶8, 249 Wis. 2d 798, 643 N.W.2d 165.

Here, the record reveals that the circuit court's sentencing decision had a "rational and explainable basis." *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (citation omitted). The court considered the gravity of the offenses, Romesburg's character, 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 sentence imposed, which was well within the range authorized by law, does not "shock public sentiment and violate the judgment of reasonable people concerning what is right

and proper under the circumstances.” *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We agree with counsel that a challenge to Romesburg’s sentence would lack arguable merit.

Our independent review of the record does not disclose any potentially meritorious issue for appeal.² 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 and relieve Attorney Tristan S. Breedlove of further representation 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 Tristan S. Breedlove is relieved of further representation of Romesburg in this matter.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Diane M. Fremgen
Clerk of Court of Appeals

² Any challenge to the underlying convictions is outside the scope of this appeal. *See 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.