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DISTRICT IV

December 8, 2017

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

2016AP1015-CRNM	State of Wisconsin v. Daniel G. Zamora (L.C. # 2014CM556)
2016AP1016-CRNM	State of Wisconsin v. Daniel G. Zamora (L.C. # 2014CM569)
2016AP1017-CRNM	State of Wisconsin v. Daniel G. Zamora (L.C. # 2015CM43)

Before Lundsten, P.J.¹

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).

Daniel G. Zamora appeals three criminal judgments sentencing him, following the revocation of his probation, on three separate convictions for violating a harassment injunction. Attorney Patricia Sommer has filed a no-merit report seeking to withdraw as appellate counsel.

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

See WIS. STAT. RULE 809.32; *Anders v. California*, 386 U.S. 738, 744 (1967); *State ex rel. McCoy v. Wisconsin Court of Appeals*, 137 Wis. 2d 90, 403 N.W.2d 449 (1987), *aff'd*, 486 U.S. 429 (1988). The no-merit report addresses Zamora's prior waiver of counsel and the entry of his pleas, as well as the sentences after revocation. Zamora was sent a copy of the report, but has not filed a response. Upon reviewing the entire record, as well as the no-merit report, we conclude that there are no arguably meritorious appellate issues.

We first note that an appeal from a sentence following revocation does not bring an underlying conviction before this court. *State v. Drake*, 184 Wis. 2d 396, 399, 515 N.W.2d 923 (Ct. App. 1994). Nor can an appellant challenge the validity of any probation revocation decision in this proceeding. See *State ex rel. Flowers v. DHSS*, 81 Wis. 2d 376, 384, 260 N.W.2d 727 (1978) (probation revocation is independent from the 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 way of certiorari directed to the court of conviction). The only potential issues for appeal before us are those relating to the circuit court's imposition of sentence following revocation.

Our review of a sentence determination begins "with the presumption that the trial court acted reasonably, and the defendant must show some unreasonable or unjustifiable basis in the record for the sentence." *State v. Krueger*, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). Here, the record shows that Zamora was afforded the opportunity to review and comment on the revocation materials and to address the court prior to sentencing, both personally and by counsel. The State recommended that the court impose the maximum sentence on at least one of the counts, while the defense asked the court for concurrent sentences of six months. The victim

also addressed the court and asked the court to impose the maximum sentence on all three counts, stating that she had suffered a miscarriage during the time period when Zamora was making repeated phone calls to her in violation of the injunction, and threatening to kill her.

The circuit court considered the standard sentencing factors and explained their application to this case. *See generally State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. Regarding the severity of the offense, the court emphasized as particularly serious an episode in which Zamora had entered the victim's house and told her that he would "get" her, as well as other phone calls and voice messages that involved threats. With respect to Zamora's character and rehabilitative needs, the court observed that Zamora's criminal history dating back to 1998 and his inability to comply with supervision rules demonstrated that he had no regard for the criminal justice system, that his entire thought process involved criminal thinking, that even his statement to the court reinforced that he had a controlling personality, trying to get others to do what he wanted without following the rules himself, and that he was incapable of taking responsibility for his actions. The court concluded that it was necessary to impose the maximum term on each count to protect the public because Zamora was dangerous.

The court then sentenced Zamora to consecutive terms of nine months on each of the three counts, with the first nine months being without Huber privileges. The court also converted any outstanding monies owed to a civil judgment and awarded Zamora 108 days of sentence credit to be applied to the first sentence. We see no illegality in the sentences or misuse of the circuit court's discretion in imposing them. Additionally, although the sentences were the maximum allowed under WIS. STAT. § 813.125(7), they were not "so excessive and unusual and so disproportionate to the offense[s] committed as to shock public sentiment and violate the

judgment of reasonable people concerning what is right and proper under the circumstances.””
See State v. Grindemann, 2002 WI App 106, ¶31, 255 Wis. 2d 632, 648 N.W.2d 507 (quoted source omitted). That is particularly true when the probation violation that brought Zamora back before the court was yet another violation of the harassment injunction.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgments. *See State v. Allen*, 2010 WI 89, ¶¶81-82, 328 Wis. 2d 1, 786 N.W.2d 124. 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 sentencing Zamora after revocation are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Patricia Sommer is relieved of any further representation of Daniel G. Zamora in these matters. *See* WIS. STAT. RULE 809.32(3).

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

Diane M. Fremgen
Clerk of Court of Appeals