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DISTRICT II

December 27, 2017

To:

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

2017AP1513-CRNM State of Wisconsin v. Cordiaral F. West (L.C. # 2013CF55)

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).

Cordiaral F. West appeals from a judgment sentencing him after revocation of his probation. West'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). West received a copy of the report,

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

was advised of his 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. WIS. STAT. RULE 809.21.

West was convicted following a no contest plea to conspiracy to possess cocaine (15-40 grams) with intent to deliver near a school as a second or subsequent offense. The circuit court withheld sentence and placed West on probation for five years. His probation was later revoked, and he appeared before the court for sentencing after revocation. There, the court imposed a sentence of ten years of initial confinement and five 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 offense, West'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. Under the circumstances of the case, which were aggravated by West's criminal history and

poor performance on supervision,² the sentence imposed does not “shock public sentiment and violate the judgment of reasonable people concerning what is right and proper.” *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). The court reasonably found West ineligible to participate in both the Challenge Incarceration Program and the Substance Abuse Program. We agree with counsel that a challenge to West’s sentence would lack arguable merit.

Our independent review of the record does not disclose any potentially meritorious issue for appeal.³ 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 Daniel R. Goggin, II 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 Daniel R. Goggin, II is relieved of further representation of West 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 West was revoked for absconding from supervision, providing police with a false name, fleeing from police twice, possessing cocaine, and possessing marijuana.

³ Any challenge to the underlying conviction 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.