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DISTRICT IV

January 19, 2018

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

2017AP242-CRNM State of Wisconsin v. Karie Lee Sullivan (L.C. # 2013CF160)

Before Lundsten, P.J., Sherman and Kloppenburg, JJ.

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).

Attorney Hannah Schieber Jurss, appointed counsel for appellant Karie Lee Sullivan, has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2013-14)¹ and *Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit report addresses

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

the validity of the sentence imposed by the circuit court following revocation. Sullivan was sent a copy of the report, but has not filed a response. Upon independently reviewing the entire record, as well as the no-merit report, we agree with counsel's assessment that there are no arguably meritorious appellate issues.

In October 2013, Sullivan pled no contest to operating a motor vehicle while intoxicated, fourth offense in five years, and misdemeanor bail jumping. The court withheld sentence and placed Sullivan on probation. In May 2016, the Department of Corrections (DOC) revoked Sullivan's probation. The court sentenced Sullivan to one year of initial confinement and fifteen months of extended supervision.

The appeal in this case from the sentence following 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 before us in 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). The only potential appellate issues at this point in the proceedings relate to sentencing following revocation.

Our review of a sentence determination begins "with the presumption that the [circuit] court acted reasonably, and the defendant must show some unreasonable or unjustifiable basis in

the record for the sentence complained of.”² *State v. Krueger*, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). Here, following revocation, the DOC recommended one year of initial confinement and one year of extended supervision. The State recommended one year of initial confinement and eighteen months of extended supervision. The defense recommended a sentence of time served. The circuit court sentenced Sullivan to one year of initial confinement and fifteen months of extended supervision, and awarded Sullivan 227 days of sentence credit.

The circuit court explained that it considered facts pertinent to the standard sentencing factors and objectives, including Sullivan’s character, the need to protect the public, and the gravity of the offense. *See State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. The sentence was well within the maximum Sullivan faced, and therefore was not so excessive or unduly harsh as to shock the conscience. *See State v. Grindemann*, 2002 WI App 106, ¶31, 255 Wis. 2d 632, 648 N.W.2d 507. We discern no erroneous exercise of the court’s sentencing discretion.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. 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 judgment of conviction is summarily affirmed. *See* WIS. STAT. RULE 809.21.

² A circuit court’s duty at sentencing after revocation is the same as its duty at an original sentencing. *See State v. Wegner*, 2000 WI App 231, ¶7 n.1, 239 Wis. 2d 96, 619 N.W.2d 289.

IT IS FURTHER ORDERED that Attorney Hannah Schieber Jurss is relieved of any further representation of Karie Lee Sullivan in this matter. *See* WIS. STAT. RULE 809.32(3).

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

Diane M. Fremgen
Acting Clerk of Court of Appeals