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DISTRICT IV

March 19, 2018

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

2017AP1859-CRNM State of Wisconsin v. Sara A. Loutsch (L.C. # 2016CF148)

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).

Sara Loutsch appeals a judgment sentencing her to prison following the revocation of her probation on a conviction for bail jumping as a repeat offender. Attorney Mark Schoenfeldt has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32

(2015-16);¹ *Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit report addresses the circuit court's exercise of its sentencing discretion and the amount of sentence credit to which Loutsch is due. Loutsch 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 to the court of conviction). The only potential issue for appeal is the circuit court's imposition of sentence following revocation.

The record shows that the circuit court considered relevant sentencing factors and rationally explained their application to this case, emphasizing that bringing drugs into a jail was more serious than a positive drug test, and that Loutsch's continuing struggles with addiction called for treatment in a confined setting. See generally *State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. The court then sentenced Loutsch to twenty-two months of initial confinement and eighteen months of extended supervision, to be served concurrently with several other sentences imposed at the same time on companion cases. The court also imposed

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

standard costs and conditions of supervision and determined that Loutsch was eligible for the challenge incarceration program and the substance abuse program. The court took the matter of sentence credit under advisement at the hearing, and awarded 118 days in the judgment of conviction.

The bifurcated sentence did not exceed the maximum available penalty. *See* WIS. STAT. §§ 946.49(1)(b) (classifying bail jumping as a Class H felony); 973.01(2)(b)8. and (d)5. (providing maximum terms of three years of initial confinement and three years of extended supervision for a Class H felony); 939.62(1)(b) (increasing maximum term of imprisonment for offense otherwise punishable by one to ten years by four additional years for habitual criminality); 973.01(2)(b)10. (enlarging maximum initial incarceration period by the same amount as the total term of imprisonment based upon a penalty enhancer). Nor was the sentence unduly harsh, taking into account that Loutsch had failed on probation and the court did not even make use of the penalty enhancer. *See generally State v. Grindemann*, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507.

Although the DOC calculation for sentence credit had included an additional period of time when Loutsch had been in jail prior to the sentencing in this case, the court explained that that period of time was not in connection with this case because Loutsch had a signature bond that remained in effect while she was on a probation hold in another case.

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.

Accordingly,

IT IS ORDERED that the judgment sentencing Loutsch following the revocation of her probation is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Mark Schoenfeldt is relieved of any further representation of Sara Loutsch in this matter pursuant to WIS. STAT. RULE 809.32(3).

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

Sheila T. Reiff
Clerk of Court of Appeals