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**DISTRICT IV**

June 22, 2018

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Bryan P. Weisensel  
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You are hereby notified that the Court has entered the following opinion and order:

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2017AP1153-CRNM      State of Wisconsin v. Bryan P. Weisensel (L.C. # 2014CM504)

Before Kloppenburg, J.<sup>1</sup>

**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).**

Bryan Weisensel appeals a judgment sentencing him to jail following the revocation of his probation. Attorney Alisha McKay has filed a no-merit report seeking to withdraw as

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<sup>1</sup> 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.

appellate counsel. WIS. STAT. RULE 809.32, *see also Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit report addresses whether there would be any basis for challenging Weisensel's sentence. Weisensel was sent a copy of the no-merit report, but has not filed a response. Upon reviewing the entire record, as well as the no-merit report, I conclude that there are no arguably meritorious appellate issues.

First, I note that an appeal from a sentence following revocation does not bring an underlying conviction before this court. *See 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, then, is the circuit court's imposition of sentence following revocation.

Weisensel was charged with one count of criminal damage to property and one count of disorderly conduct, both involving domestic abuse. In exchange for his plea of no contest on both counts, the circuit court withheld sentence and placed Weisensel on probation for twelve months, in accordance with a plea agreement. The court then ordered a one-year extension of probation pursuant to a stipulation between the parties. Weisensel's probation was later revoked, and the court sentenced him to nine months in jail on the criminal damage to property count and ninety days in jail on the disorderly conduct count, to be served concurrently.

This court's 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.” *State v. Krueger*, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). The standards for the circuit court and this court on sentencing issues are well-established and need not be repeated here. *See State v. Gallion*, 2004 WI 42, ¶¶17-51, 270 Wis. 2d 535, 678 N.W.2d 197. In this case, the circuit court considered appropriate factors, did not consider improper factors, and reached a reasonable result. The court considered the nature of the offenses, taking into consideration the domestic abuse modifier and the fact that alcohol played a role in the offenses. With respect to the defendant’s character and rehabilitative needs, the court noted that Weisensel had failed to take advantage of alcohol treatment that was offered to him and did not seem to be willing to deal with his substance abuse issues.

The circuit court imposed the maximum sentence on each count and awarded 105 days of sentence credit. *See* WIS. STAT. §§ 943.01(1) (classifying criminal damage to property as a Class A misdemeanor), 939.51(3)(a) (providing maximum imprisonment of nine months for a Class A misdemeanor); 947.01(1) (classifying disorderly conduct as a Class B misdemeanor); 939.51(3)(b) (providing maximum imprisonment of ninety days for a Class B misdemeanor). The court imposed the maximum sentence only after it had first imposed probation and withheld sentence at the time of Weisensel’s original sentencing hearing. Under these circumstances, it cannot reasonably be argued that the sentence is so excessive as to shock public sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). Accordingly, I agree with counsel’s assertion that there would be no merit to challenging the circuit court’s exercise of its sentencing discretion.

This court’s independent review of the record discloses no other potential issues for appeal.

Therefore,

IT IS ORDERED that the judgment is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Alisha McKay is relieved of further representing Weisensel in this matter. *See* WIS. STAT. RULE 809.32(3).

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

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*