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DISTRICT III

September 25, 2018

To:

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

2018AP758-CRNM State of Wisconsin v. Joshua A. Mitch (L. C. No. 2013CF925)

Before Stark, P.J., Hruz and Seidl, 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).

Joshua A. Mitch appeals from a judgment imposing a sentence after the revocation of probation. His appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2015-16),¹ and *Anders v. California*, 386 U.S. 738 (1967). Mitch received a copy of the report,

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

was advised of his right to file a response, and has elected not to do so. Upon consideration of the report and an independent review of the record, the judgment is summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

On February 29, 2016, Mitch was convicted of operating while under the influence of an intoxicant, as a fifth offense, and was placed on probation for three years. His probation was revoked on June 15, 2017. The sentencing court imposed the maximum sentence of three years' initial confinement and three years' extended supervision. Sentence credit was eventually stipulated to be a total of 540 days, and that total is reflected on the judgment.²

As the no-merit report observes, on appeal this court reviews only the sentence imposed after revocation. *See State v. Scaccio*, 2000 WI App 265, ¶10, 240 Wis. 2d 95, 622 N.W.2d 449. The only possible issue for appeal is whether the sentence was an erroneous exercise of discretion or excessive. We agree with the no-merit analysis that the sentencing court properly exercised its discretion and that the maximum sentence is not excessive in light of Mitch's record and his failure on probation. There being no potential issues for appeal, this court accepts the no-merit report, affirms the judgment, and discharges appellate counsel of the obligation to represent Mitch further in this appeal.

² At sentencing the parties agreed to 514 days of sentence credit. Approximately one month after sentencing, the parties agreed that the sentence credit totaled 534 days. Postconviction counsel and the prosecutor later stipulated that Mitch was entitled to six additional days of sentence credit, bringing the total to 540 days.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of conviction is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Jeremy A. Newman is relieved from further representing Joshua A. Mitch in this appeal. *See* 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