



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT III

September 25, 2018

To:

Hon. Marc A. Hammer
Circuit Court Judge
Brown County Courthouse
P.O. Box 23600
Green Bay, WI 54305-3600

John VanderLeest
Clerk of Circuit Court
Brown County Courthouse
P.O. Box 23600
Green Bay, WI 54305-3600

Leonard D. Kachinsky
Kachinsky Law Offices
832 Neff Ct.
Neenah, WI 54956-0310

David L. Lasee
District Attorney
P.O. Box 23600
Green Bay, WI 54305-3600

Criminal Appeals Unit
Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

Kenneth Deshawn Wallace 419413
Oshkosh Correctional Inst.
P.O. Box 3310
Oshkosh, WI 54903-3310

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

2017AP1742-CRNM State of Wisconsin v. Kenneth Deshawn Wallace
(L. C. No. 2014CF1359)

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).

Counsel for Kenneth Wallace has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2015-16),¹ concluding there is no basis for challenging the sentence imposed after

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

revocation of Wallace's probation. Wallace was informed of his right to respond to the report and has not responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude there is no arguable merit to any issue that could be raised on appeal. Therefore, we summarily affirm the judgment of conviction. See WIS. STAT. RULE 809.21.

In March 2015, Wallace pleaded no contest to one count of child enticement, as a repeater. The circuit court withheld sentence and placed Wallace on seven years' probation. In November 2016, Wallace's probation was revoked and, out of a maximum possible twenty-seven-year sentence, the court imposed sixteen years, consisting of eight years' initial confinement and eight years' extended supervision.

As the no-merit report acknowledges, an appeal from a judgment imposing sentence after probation 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 the subject of this appeal. See *State ex rel. Flowers v. DHSS*, 81 Wis. 2d 376, 384, 260 N.W.2d 727 (1978) (holding that 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) (holding that judicial review of probation revocation is by petition for certiorari in circuit court). This court's review is therefore limited to potential issues arising from the sentencing after probation revocation.

The no-merit report addresses whether the circuit court properly exercised its discretion when imposing the sentence after revocation. Upon reviewing the record, we agree with counsel's description, analysis, and conclusion that any challenge to Wallace's sentence after

revocation would lack arguable merit. Our 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 Leonard D. Kachinsky is relieved of further representing Kenneth Deshawn Wallace in this matter. *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