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December 26, 2018

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

2017AP2407-CRNM State of Wisconsin v. Dennis M. Warner (L.C. #2013CF1971)

Before Neubauer, C.J., Reilly, P.J., and Hagedorn, J.

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).

Dennis M. Warner appeals from a judgment imposing sentence after the revocation of his 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, 744 (1967), addressing whether the circuit court appropriately exercised its discretion in imposing sentence. Warner received a copy of the

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

report and elected not to file a response. Upon consideration of the no-merit report and an independent review of the record, we conclude that the judgment may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

Warner pled no contest to one count of receiving stolen property in an amount greater than \$10,000, a Class G felony. The court withheld sentence and ordered a three-year term of probation. Warner's probation was revoked, and he was returned to the same circuit court judge for sentencing. The court imposed a four-year bifurcated sentence, with one year of initial confinement followed by three years of extended supervision. The court found Warner ineligible for both the Challenge Incarceration Program and the Substance Abuse Program,² and ordered 303 days of presentence credit pursuant to WIS. STAT. § 973.155.

Because this matter is before us following sentencing after probation revocation, Warner's underlying conviction is not before us. *See State v. Drake*, 184 Wis. 2d 396, 399, 515 N.W.2d 923 (Ct. App. 1994). In addition, Warner cannot challenge the administrative revocation decision as part of this appeal. *See State ex rel. Cramer v. Court of Appeals*, 2000 WI 86, ¶28, 236 Wis. 2d 473, 613 N.W.2d 591 (the mechanism for challenging probation revocation is by writ of certiorari in the circuit court). Our review is limited to the circuit court's sentencing discretion.

² The judgment of conviction entered after revocation of probation states in the sentence "Comments" section: "Defendant is not eligible for the Challenge Incarceration Program. Defendant is not eligible for the Substance Abuse Program." The pre-printed boxes on the form judgment indicating the circuit court's determination that Warner "is not eligible" for these programs are not checked or otherwise marked. Because the judgment reflects the circuit court's ineligibility determination with sufficient prominence, we will not require the entry of a modified judgment.

Sentencing after probation revocation is reviewed “on a global basis, treating the latter sentencing as a continuum of the” original sentencing hearing. *See State v. Wegner*, 2000 WI App 231, ¶7, 239 Wis. 2d 96, 619 N.W.2d 289. The court should consider many of the same objectives and factors it is expected to consider at the original sentencing hearing. *See id.*

We agree with appellate counsel’s analysis and conclusion that there is no merit to any issue challenging the sentence imposed after revocation. The circuit court considered the seriousness of the offense, Warner’s character, and the need to protect the public. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The court stated that its primary sentencing objective was to protect the public from Warner’s “predatory conduct.” The court considered but rejected a “time served disposition” given the “depth and extent of the conduct, coupled with [Warner’s] zero remorse.” Instead, the court ordered one year of initial confinement understanding that, with sentence credit, Warner would not serve much time in prison. Though the court ordered less initial confinement than recommended by the State, it ordered three years of extended supervision:

So that will, I think, do two things. One is it gives you a swift and certain response, and hopefully will have a deterrent effect, but it also will give the department control, and they will be able to establish conditions they need to [] assure the safety of the public so that you’re not running around here preying on people.

The circuit court’s sentence was a demonstrably proper exercise of discretion with which we will not interfere. *See State v. Gallion*, 2004 WI 42, ¶¶17-18, 270 Wis. 2d 535, 678 N.W.2d 197. Further, it cannot reasonably be argued that Warner’s sentence is so excessive or unusual as to shock public sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Our review of the record discloses no other potential issues for appeal. Therefore,

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

IT IS FURTHER ORDERED that Attorney Michael J. Herbert is relieved from further representing Dennis M. Warner 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