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DISTRICT II

August 7, 2019

To:

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

2019AP624-CRNM	State of Wisconsin v. Thomas J. Gruenwald (L.C. #2016CF316)
2019AP625-CRNM	State of Wisconsin v. Thomas J. Gruenwald (L.C. #2017CM372)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, 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).

In these consolidated cases, Thomas J. Gruenwald appeals from judgments sentencing him after revocation of his probation. Gruenwald's appellate counsel filed a no-merit report

pursuant to WIS. STAT. RULE 809.32 (2017-18)¹ and *Anders v. California*, 386 U.S. 738 (1967). Gruenwald received a copy of the report, was advised of his right to file a response, and has elected not to do so. After reviewing the records and counsel’s report, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgments. *See* WIS. STAT. RULE 809.21.

Gruenwald was convicted following no contest pleas to intimidating a victim and obstructing/resisting an officer. The circuit court withheld sentence and placed Gruenwald on probation. His probation was later revoked due to numerous rules violations, and he appeared before the court for sentencing after revocation. There, the court imposed an aggregate sentence of five years of initial confinement and five years of extended supervision. This no-merit appeal follows.

The no-merit report addresses whether the circuit court properly exercised its discretion in imposing its sentence after revocation. The circuit court’s duty at the sentencing after revocation is the same as its duty at the original sentencing. *State v. Wegner*, 2000 WI App 231, ¶7 n.1, 239 Wis. 2d 96, 619 N.W.2d 289. Where, as in the present case, the same judge presides at both proceedings, we will consider the original sentencing reasons to be implicitly adopted at the sentencing after revocation. *State v. Reynolds*, 2002 WI App 15, ¶8, 249 Wis. 2d 798, 643 N.W.2d 165.

Here, the records reveal that the circuit court’s sentencing decision had a “rational and explainable basis.” *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197

¹ All references to the Wisconsin Statutes are to the 2017-18 version.

(citation omitted). The court considered the gravity of the offenses, Gruenwald'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 sentence imposed, which was within the range authorized by law, does not “shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances.” *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We agree with counsel that a challenge to Gruenwald's sentence would lack arguable merit.

Our independent review of the records does not disclose any potentially meritorious issue for appeal.² Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report and relieve Attorney Catherine Malchow of further representation in these matters.

Upon the foregoing reasons,

IT IS ORDERED that the judgments of the circuit court are summarily affirmed. *See* WIS. STAT. RULE 809.21.

² Any challenge to the underlying convictions is outside the scope of this appeal. *See State ex rel. Marth v. Smith*, 224 Wis. 2d 578, 582 n.5, 592 N.W.2d 307 (Ct. App. 1999). Review of probation revocation is by way of certiorari review to the court of conviction. *Id.* at 583.

IT IS FURTHER ORDERED that Attorney Catherine Malchow is relieved of further representation of Gruenwald in these matters.

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

Sheila T. Reiff
Clerk of Court of Appeals