



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 II

August 21, 2019

To:

Hon. Joseph W. Voiland
Circuit Court Judge
Ozaukee County Circuit Court
1201 S. Spring St.
Port Washington, WI 53074

Marylou Mueller
Clerk of Circuit Court
Ozaukee County Circuit Court
1201 S. Spring St.
Port Washington, WI 53074-0994

Adam Y. Gerol
District Attorney
P.O. Box 994
Port Washington, WI 53074-0994

Kathilynne Grotelueschen
Assistant State Public Defender
P.O. Box 7862
Madison, WI 53707

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

Allen M. Haecker, Jr., #328214
Racine Correctional Inst.
P.O. Box 900
Sturtevant, WI 53177-0900

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

2019AP518-CRNM State of Wisconsin v. Allen M. Haecker, Jr. (L.C. #2016CF308)

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).

Allen M. Haecker, Jr., appeals from the judgment convicting him of felony bail jumping after revocation of his probation. Appointed appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2017-18)¹ and *Anders v. California*, 386 U.S. 738 (1967).

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

Haecker was advised of his right to file a response but has not done so. Upon consideration of the no-merit report and an independent review of the record as mandated by *Anders* and RULE 809.32, we summarily affirm the judgment because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

While on probation in a Sheboygan County case, Haecker was found occupying, without permission, the basement of a vacant duplex unit. Police discovered in his possession drug paraphernalia and a white powdery substance that tested positive for the presence of methamphetamine. He was charged with felony bail jumping, disorderly conduct, possession of drug paraphernalia, and possession of methamphetamine. He pled guilty to felony bail jumping; the remaining counts were dismissed and read in. The circuit court adopted the parties' joint recommendation and placed Haecker on two years' probation.

Four months later, Haecker's probation was revoked for possessing methamphetamine and drug paraphernalia, consuming marijuana and methamphetamine, and pushing and slapping his partner. The circuit court sentenced him to three years' initial confinement and two years' extended supervision. This no-merit appeal followed.

The no-merit report examines whether the circuit court erroneously exercised its discretion in sentencing Haecker after his probation was revoked. Sentencing lies within the sound discretion of the circuit court, and a strong policy exists against appellate interference with that discretion. *State v. Harris*, 119 Wis. 2d 612, 622, 350 N.W.2d 633 (1984). The primary factors to be considered by the circuit court in sentencing are the gravity of the offense, the character of the offender and the need for protection of the public. *Id.* at 623. The weight to be

given to these factors is within the circuit court's discretion. *Cunningham v. State*, 76 Wis. 2d 277, 282, 251 N.W.2d 65 (1977).

Our review of the sentencing transcript reveals that the court considered the appropriate factors. The court observed that “things soon went awry” for Haecker while on probation, that he was responsible for his conduct, that he had a “high rehabilitative need,” and that there was a “high need to protect the public.” The five-year sentence did not exceed the statutory maximum. We conclude that the circuit court properly exercised its sentencing discretion.

On this appeal from sentencing after revocation, Haecker is limited to raising issues relating to that sentence. Haecker may not challenge either the underlying conviction, *see State v. Drake*, 184 Wis. 2d 396, 399, 515 N.W.2d 923 (Ct. App. 1994), or the validity of the probation revocation decision, *cf. 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).

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

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 Kathilynne Grotelueschen is relieved from further representing Haecker 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