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DISTRICT II

November 20, 2019

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

2019AP1179-CRNM State of Wisconsin v. Jesse J. Medina (L.C. #2017CF211)

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).

Jesse J. Medina appeals from a judgment sentencing him after revocation of his probation. Medina'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). Medina filed a response.

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

After reviewing the record, counsel's report, and Medina's response, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment. WIS. STAT. RULE 809.21.

Medina was convicted following a guilty plea to failing to update his information with the sex offender registry. The circuit court withheld sentence and placed Medina on probation for three years. His probation was later revoked, and he appeared before the court for sentencing after revocation. There, the court imposed a sentence of three years of initial confinement and three years of extended supervision.

Medina filed a postconviction motion. In it, he argued that recent research on sex offender recidivism was a new factor² warranting sentence modification. After a hearing on the matter, the circuit court denied the motion. It explained that the recidivism rate of sex offenders was a "minor thing" compared to Medina's history of "continual reoffending."³ It further noted that its primary sentencing goals were protecting the public, deterring others, and punishing Medina. 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,

² A new factor is "a fact or set of facts highly relevant to the imposition of sentence, but not known to the trial judge at the time of original sentencing, either because it was not then in existence or because ... it was unknowingly overlooked by all of the parties." *State v. Harbor*, 2011 WI 28, ¶40, 333 Wis. 2d 53, 797 N.W.2d 828 (citation omitted).

³ Medina has a long criminal record, including a previous conviction for a sex offender registry violation.

¶7 n.1, 239 Wis. 2d 96, 619 N.W.2d 289. Where, as in the present case, different judges presided over the original sentencing and the sentencing after revocation, the record should reflect that the circuit court familiarized itself with the particulars of the case at issue. See *State v. Walker*, 2008 WI 34, ¶3, 308 Wis. 2d 666, 747 N.W.2d 673; *State v. Reynolds*, 2002 WI App 15, ¶9, 249 Wis. 2d 798, 643 N.W.2d 165 (2001).

Here, the record reflects that the circuit court was familiar with the particulars of Medina's case. Likewise, the record reveals that the 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. The court considered the seriousness of the offense, Medina'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. Under the circumstances of the case, the sentence imposed does not "shock public sentiment and violate the judgment of reasonable people concerning what is right and proper." See *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We agree with counsel that a challenge to Medina's sentence would lack arguable merit.

The no-merit report also addresses whether the circuit court properly denied Medina's postconviction motion. Whether a new factor warrants sentence modification is a discretionary determination for the circuit court. *State v. Harbor*, 2011 WI 28, ¶¶37, 66, 333 Wis. 2d 53, 797 N.W.2d 828. Here, the court made no error of law and explained why the new information would not justify modifying Medina's sentence. We agree with counsel that a challenge to the denial of Medina's postconviction motion would lack arguable merit.

As noted, Medina filed a response to counsel's no-merit report. The response is rambling and difficult to follow. In any event, we are not persuaded that it presents an issue of arguable merit.

Our independent review of the record does not disclose any potentially meritorious issue for appeal.⁴ 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 Mark R. Thompson of further representation in this matter.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Mark R. Thompson is relieved of further representation of Medina in this matter.

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

Sheila T. Reiff
Clerk of Court of Appeals

⁴ Any challenge to the underlying conviction 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.