



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 IV

December 10, 2019

To:

Hon. Stephen E. Ehlke
Circuit Court Judge
Branch 15
215 S. Hamilton St., Rm. 7107
Madison, WI 53703

Carlo Esqueda
Clerk of Circuit Court
Dane County Courthouse
215 S. Hamilton St., Rm. 1000
Madison, WI 53703

Shelly J. Rusch
Assistant District Attorney
215 S. Hamilton St., Rm. 3000
Madison, WI 53703-3297

Patricia Sommer
Sommer Law Office, LLC
509 Nova Way
Madison, WI 53704

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

Hanife E. Johnson 633016
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:

2019AP893-CRNM State of Wisconsin v. Hanife E. Johnson (L.C. # 2014CF1868)

Before Fitzpatrick, P.J., Kloppenburg and Nashold, 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).

Hanife E. Johnson appeals a judgment of conviction imposing sentence after the revocation of his probation. His appellate counsel, Attorney Patricia Sommer, filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32

(2017-18).¹ Johnson did not file a response. This court has considered the no-merit report, and we have independently reviewed the record. We conclude that there are no arguably meritorious issues for appeal. Therefore, we summarily affirm the judgment. *See* WIS. STAT. RULE 809.21.

Johnson pled guilty in 2015 to two counts of child enticement for the purpose of giving the child a controlled substance. Both counts arose on or about August 4, 2014. For each count, Johnson faced maximum penalties of a \$100,000 fine and a twenty-five-year term of imprisonment. *See* WIS. STAT. §§ 948.07(6) (2013-14), 939.50(3)(d) (2013-14). The circuit court withheld sentence and imposed two concurrent ten-year terms of probation with four months in jail as a condition of probation as to one of the counts. The Department of Corrections subsequently revoked Johnson's probation, and he returned to circuit court for sentencing. The circuit court imposed two consecutive ten-year terms of imprisonment, each bifurcated as four years of initial confinement and six years of extended supervision.² The circuit court also found Johnson eligible for the challenge incarceration program and the Wisconsin substance abuse program and awarded Johnson the 736 days of presentence credit that he requested.

As appellate counsel correctly explains, an appeal from a judgment imposing sentences after probation revocation does not bring the underlying convictions before this court. *See State v. Tobey*, 200 Wis. 2d 781, 784, 548 N.W.2d 95 (Ct. App. 1996). The validity of the probation revocation is also not the subject of such an appeal. *See State ex rel. Flowers v. DHSS*, 81 Wis.

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

² The sentencing proceeding encompassed not only Johnson's convictions in this case but also Johnson's convictions in a second matter, namely, *State v. Johnson*, No. 2016CF2199 (Dane Cty. Circuit Court). Case No. 2016CF2199 is not at issue in this appeal, and we do not discuss that matter further.

2d 376, 384, 260 N.W.2d 727 (1978). We therefore consider only whether Johnson could raise an arguably meritorious challenge to his sentences.

Sentencing decisions lie within the circuit court’s discretion. *See State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. “When the exercise of discretion has been demonstrated, we follow a consistent and strong policy against interference with the discretion of the [circuit] court in passing sentence” *State v. Stenzel*, 2004 WI App 181, ¶7, 276 Wis. 2d 224, 688 N.W.2d 20.

Upon review of the record here, we agree with appellate counsel that Johnson could not raise an arguably meritorious challenge to his sentences. The circuit court properly identified rehabilitation and deterrence as the primary objectives of the sentences. *See Gallion*, 270 Wis. 2d 535, ¶41. The circuit court also identified the factors that it deemed relevant to achieving the sentencing objectives. *See id.*, ¶43. Among the factors the court discussed were the gravity of the offenses, Johnson’s character, and the protection of the public. *See State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The consecutive sentence structure was lawful. *See Smith v. State*, 85 Wis. 2d 650, 659, 271 N.W.2d 20 (1978). The sentences that the circuit court selected were well within the limits of the maximum sentences allowed by statute and cannot be considered unduly harsh or unconscionable. *See State v. Grindemann*, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507. Under these circumstances, a challenge to the circuit court’s exercise of sentencing discretion would lack arguable merit.

Our independent review of the record does not disclose any other potential issues for appeal. We conclude that further postconviction or appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

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

IT IS FURTHER ORDERED that Attorney Patricia Sommer is relieved of any further representation of Hanife E. Johnson 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