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DISTRICT III

January 14, 2020

To:

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

2018AP1576-CRNM State of Wisconsin v. Robert T. Champion (L. C. No. 2016CF134)

Before Stark, P.J., Hruz and Seidl, 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).

Counsel for Robert Champion has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2017-18),¹ concluding there is no basis for challenging the sentence imposed after revocation of Champion's probation. Champion was informed of his right to respond to the

report and has not responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude there is no arguable merit to any issue that could be raised on appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

In May 2017, Champion pleaded guilty to disorderly conduct and felony bail jumping, both as a repeater. The circuit court withheld sentence and placed Champion on probation for two years.² Champion did not appeal the judgment of conviction. Champion's probation was later revoked. At the sentencing after revocation hearing, Champion waived his right to counsel.

The Department of Corrections ("DOC") recommended a ninety-day sentence for the disorderly conduct count and a concurrent twelve-month jail sentence for the felony bail jumping count, with Huber privileges. Champion urged the court to adopt the DOC's recommendation. After the State recommended a sentence that exceeded the DOC's recommendation for the felony bail jumping count,³ the circuit court gave Champion the option of withdrawing his attorney waiver, but Champion declined to do so. Out of maximum possible sentences totaling ten years with the repeater enhancers, the court imposed twenty-four months of initial confinement followed by twenty-four months of extended supervision on the felony bail jumping charge, and a concurrent ninety-day sentence on the disorderly conduct charge.

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

² The court imposed two years of probation on the felony bail jumping count with a concurrent one-year probation term for the disorderly conduct count.

³ The State recommended a three-year prison term consisting of eighteen months' initial confinement and eighteen months' extended supervision.

An appeal from a judgment imposing a sentence after probation revocation does not bring the underlying conviction before us. See *State v. Drake*, 184 Wis. 2d 396, 399, 515 N.W.2d 923 (Ct. App. 1994). Additionally, the validity of the probation revocation itself is not the subject of this appeal. See *State ex rel. Flowers v. DHSS*, 81 Wis. 2d 376, 384, 260 N.W.2d 727 (1978) (probation revocation is independent from 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 petition for certiorari in circuit court). This court's review is therefore limited to issues arising from the sentencing after Champion's probation revocation.

The no-merit report addresses whether the circuit court properly exercised its discretion when imposing the sentence after revocation. Upon reviewing the record, we agree with counsel's description, analysis, and conclusion that any challenge to Champion's sentence after revocation would lack arguable merit.

Although the no-merit report does not specifically address it, we also conclude there would be no arguable merit to any claim that Champion did not properly waive his right to counsel at sentencing. A criminal defendant has the constitutional right to self-representation. See U.S. CONST. amend. VI; WIS. CONST. art. I, § 7. "When a defendant seeks to proceed pro se, the circuit court must insure that the defendant (1) has knowingly, intelligently and voluntarily waived the right to counsel, and (2) is competent to proceed pro se." *State v. Klessig*, 211 Wis. 2d 194, 203, 564 N.W.2d 716 (1997). Here, the circuit court asked Champion to complete a "Waiver of Right to Attorney" form reflecting his understanding that he had a right to an attorney, and that he understood how an attorney would assist him. The form also set forth some of the difficulties of proceeding pro se. The court then engaged Champion in a lengthy colloquy

before determining that Champion was making a knowing, intelligent and voluntary waiver of his right to counsel, and that he was competent to proceed pro se.

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

Therefore,

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

IT IS FURTHER ORDERED that attorney Thomas B. Aquino is relieved of further representing Robert Champion 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