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DISTRICT II

February 19, 2020

To:

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

2019AP1548-CRNM State of Wisconsin v. Ratonda D. Holmes (L.C. #2014CF54)

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

Ratonda D. Holmes appeals from a judgment imposing a four-year sentence after her probation for retail theft was revoked. Holmes'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). Holmes

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

received a copy of the report and was advised of her right to file a response, but she has not done so. Upon consideration of the report and an independent review of the record as mandated by *Anders*, we conclude there is no arguable merit to any issue that could be raised on appeal. Therefore, 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.

Holmes was convicted of felony retail theft in 2015. Sentence was withheld; she was placed on three years' probation and given ninety days' conditional jail time, consecutive to any other sentence. Her jail time was to start within sixty days, as she had cases pending in two other counties. She absconded, because she was pregnant and would have given birth in jail and also was arrested on new charges. Her jail report date was rescheduled to April 17, 2017.

In May 2018, Holmes's probation was revoked for failing to report to jail; failing to report to her probation agent after April 17, 2017; three more incidents of retail theft; and providing a false name to police. The circuit court sentenced her to two years' initial confinement plus two years' extended supervision. This no-merit appeal followed.

The no-merit report addresses whether the circuit court misused its sentencing discretion. A strong policy exists against appellate interference with the court's sentencing discretion. *State v. Haskins*, 139 Wis. 2d 257, 268, 407 N.W.2d 309 (Ct. App. 1987). The primary factors to be considered by the trial court in sentencing are the gravity of the offense, the character of the offender, and the need for protection of the public. *State v. Harris*, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). The weight to be given to a particular factor is a matter of 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 found Holmes’s serial thefts “premeditated, serious, and aggravated,” her character “the worst [it had] seen,” that incarceration was necessary to protect the public from a “career criminal” like her. The court found that Holmes was responsible for her conduct and imposed a four-year sentence, which was less than her exposure, as she was charged as a repeater. We conclude that the court properly exercised its sentencing discretion.

The no-merit report also considers whether Holmes was given the proper sentence credit. We agree with counsel’s conclusion that no issue of arguable merit could arise from this point.

We observe that in sentencing after revocation of probation, Holmes 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, *see State ex rel. Flowers v. DHSS*, 81 Wis. 2d 376, 384, 260 N.W.2d 727 (1978). Our independent review of the record discloses no arguable merit to any other issue that could be raised on appeal. Therefore,

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

IT IS FURTHER ORDERED that Attorney Gregory Bates is relieved from further representing Holmes 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