



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

March 25, 2020

To:

Hon. Daniel J. Bissett
Circuit Court Judge
Winnebago County Courthouse
P.O. Box 2808
Oshkosh, WI 54903

Christian A. Gossett
District Attorney
P.O. Box 2808
Oshkosh, WI 54903-2808

Melissa M. Pingel
Clerk of Circuit Court
Winnebago County Courthouse
P.O. Box 2808
Oshkosh, WI 54903

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

Erica L. Bauer
Bauer Law, LLC
1835 E. Edgewood Dr., Ste. 105 #303
Appleton, WI 54913

Edmund T. Wysocki, #541310
Kettle Moraine Correctional Inst.
P.O. Box 282
Plymouth, WI 53073-0282

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

2018AP1668-CRNM State of Wisconsin v. Edmund T. Wysocki (L.C. #2007CF681)

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).

Edmund T. Wysocki appeals from a judgment imposing sentence after the revocation of his probation. His 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, 744 (1967), addressing whether the

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

circuit court appropriately exercised its discretion in imposing sentence. Wysocki has not responded. Upon consideration of the no-merit report and our independent review of the record, we conclude that the judgment may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

Upon his no-contest plea, Wysocki was convicted of one count of incest with a child. In February 2009, the circuit court withheld sentence and ordered a ten-year term of probation. On April 12, 2018, following the revocation of his probation, Wysocki appeared for sentencing in front of a new circuit court judge. The court imposed a ten-year bifurcated sentence, with five years of initial confinement and five years of extended supervision, and awarded 1265 days of sentence credit pursuant to WIS. STAT. § 973.155.²

An appeal from a judgment imposing 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 limited to issues arising from the sentence imposed after revocation.

² As discussed in counsel's no-merit report, Wysocki received presentence credit for time spent in custody: (1) before his original sentencing hearing; (2) as conditional jail time; (3) due to probation holds and alternatives to revocation; and (4) while awaiting sentencing after revocation.

We agree with appellate counsel’s analysis and conclusion that there is no merit to any issue challenging the sentence imposed after revocation. The circuit court familiarized itself with the entire record, *see State v. Walker*, 2008 WI 34, ¶3, 308 Wis. 2d 666, 747 N.W.2d 673, and reviewed the revocation packet. It considered the seriousness of the offense, Wysocki’s character, and the need to protect the public. *See State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Acknowledging the presence of mitigating and aggravating factors, the court determined that the sentence imposed was the minimum amount necessary to protect the public and to meet Wysocki’s treatment needs. *See State v. Gallion*, 2004 WI 42, ¶44, 270 Wis. 2d 535, 678 N.W.2d 197. The sentence was a demonstrably proper exercise of discretion with which we will not interfere. *See Gallion*, 270 Wis. 2d 535, ¶¶17-18. Further, we cannot conclude that the ten-year sentence when measured against the possible maximum sentence of forty years is so excessive or unusual as to shock public sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

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

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

IT IS FURTHER ORDERED that Attorney Erica L. Bauer is relieved from further representing Edmund T. Wysocki 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