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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 III

April 14, 2020

To:

Hon. Eugene D. Harrington
Circuit Court Judge
P.O. Box 339
Shell Lake, WI 54871

Jeffrey L. Kemp
District Attorney
1005 W. Main St., #700
Balsam Lake, WI 54810

Sharon Jorgenson
Clerk of Circuit Court
Polk County Justice Center
1005 W. Main St., Suite 300
Balsam Lake, WI 54810

Gregory M. Weber
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

James P. Graff 608509
New Lisbon Correctional Inst.
P.O. Box 4000
New Lisbon, WI 53950-4000

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

2019AP19-CR	State of Wisconsin v. James P. Graff
2019AP20-CR	(L. C. Nos. 2011CF78, 2012CF64)

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).

James Graff, pro se, appeals an order that denied his motion for postconviction relief in two criminal cases following sentencing after revocation. After reviewing the record, we conclude at conference that these cases are appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2017-18).¹ We affirm for the reasons discussed below.

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

Graff contends he was entitled to an evidentiary hearing on multiple claims of ineffective assistance of counsel relating to his original convictions. However, challenges raised following the revocation of probation do not bring the original judgments of conviction before the reviewing court. *See State v. Scaccio*, 2000 WI App 265, ¶10, 240 Wis. 2d 95, 622 N.W.2d 449. The scope of our jurisdiction in these appeals is limited to reviewing the sentences imposed by the circuit court after the revocation of Graff's probation.

Graff raises only two issues directly relating to his postrevocation sentences. First, he argues that he could be sentenced only once, and that occurred at his original sentencing hearing when he was placed on probation. He characterizes the circuit court's subsequent imposition of two prison sentences as an impermissible increase in punishment after the sentencing proceeding had already concluded. Second, Graff argues that because his terms of probation were concurrent, the court could not make his prison sentences consecutive.

Both of Graff's arguments rest upon his erroneous belief that a term of probation is a sentence. It is not. Rather, it is an alternative to a sentence. Specifically, WIS. STAT. § 973.09(1)(a) authorizes the circuit court to: (1) impose a sentence to be effective immediately; (2) impose a sentence and stay its execution subject to a period of probation; or (3) withhold sentence and impose a period of probation.

Here, the circuit court chose the third option. It withheld sentence at the original sentencing hearing rather than imposing and staying a sentence in either case. The fact that the terms of probation were to be served concurrently does not affect whether subsequently imposed sentences could be ordered to be concurrent or consecutive. In sum, Graff has not developed any

argument showing that the court either erred as a matter of law or erroneously exercised its discretion in imposing consecutive sentences following the revocation of his probation.

Therefore,

IT IS ORDERED that the order is summarily affirmed. WIS. STAT. RULE 809.21.

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

Sheila T. Reiff
Clerk of Court of Appeals