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**DISTRICT III**

August 18, 2020

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

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2019AP39-CRNM      State of Wisconsin v. Vincent Hunter Bilotti  
(L. C. No. 2016CF312)

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 Vincent Bilotti has filed a no-merit report concluding there is no basis to challenge Bilotti's sentence after revocation of his probation. Bilotti has responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we

conclude there is no merit to any issue that could be raised on appeal, and we summarily affirm. *See* WIS. STAT. RULE 809.21 (2017-18).<sup>1</sup>

Bilotti pleaded guilty to two counts of capturing an image of nudity after he secretly set up his laptop computer to record a video of a close friend's sixteen-year-old daughter getting undressed at Bilotti's residence. Bilotti's friend's son discovered the video. Bilotti also pleaded no contest to one count of child enticement and one count of fourth-degree sexual assault, both stemming from inappropriate massages Bilotti allegedly gave to the friend's daughter in the areas of her breasts, genitals and buttocks. Three other charges were dismissed and read in for sentencing purposes. The circuit court followed the parties' joint sentencing recommendation, withheld sentence, and placed Bilotti on probation for five years with various conditions, including a total of eighteen months in jail.

Bilotti's probation was later revoked when he violated his conditions by possessing a laptop computer that contained pornography. According to the revocation summary, police officers made contact with Bilotti following a report of a suspicious vehicle that had aluminum foil covering the windows. When officers arrived at the location, they observed a Chevrolet van matching the description near a fitness center and a strip mall. The officers knocked on a van window, and Bilotti exited the vehicle, at which time officers noticed a laptop and a bed inside the van. When the officers asked Bilotti what he was doing, he stated that he was watching Netflix. The officers ran Bilotti's name and found he was under sex offender supervision. They

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise stated.

also found Bilotti was prohibited by his rules of supervision from using the internet or having a laptop without prior approval from his probation agent.

Bilotti gave the officers permission to look at the computer, and they found Netflix as well as a website used for pornography open on the computer. The internet history also revealed other concerning pornographic videos viewed, such as “Fat Teen Porn Movie,” “Fat Teen Makes Herself Cum,” “Mature Lesbian Mom Seduces Teen Daughter,” and “Barely Legal Girl Gets Fucked by Daddy,” among others. Bilotti admitted he accessed the internet by utilizing the Wi-Fi from the fitness center next to where he parked his van. The internet history also revealed that Bilotti had accessed several “casual encounter” posts on Craigslist, as well as other pornographic websites. Bilotti was then placed in custody for a rules violation.

On sentencing after revocation, the circuit court imposed an aggregate sentence totaling four years’ initial confinement and three years’ extended supervision. During his allocution, Bilotti admitted that he violated his rules of probation when he purchased and used a laptop. He also admitted using the laptop to view pornography.

On an appeal of a sentence after revocation, our review is limited to the sentencing proceeding after the revocation, and we will not review the original judgment of conviction, the underlying plea process, or the propriety of the revocation. *See State v. Drake*, 184 Wis. 2d 396, 399, 515 N.W.2d 923 (Ct. App. 1994). Here, the no-merit report addresses the potential issue regarding whether the circuit court properly exercised its discretion when it sentenced Bilotti after revocation of his probation. We agree with counsel’s description, analysis, and conclusion that any challenge to that issue would lack arguable merit, and we will not further address it.

Bilotti's response to the no-merit report states that he "would like a state-appointed attorney to bring up in a sentence modification motion ... that the Judge based his sentencing on several pieces of incorrect or untrue information, which he then considered as aggravating factors in determining the terms and duration of my sentence." Bilotti contends the circuit court referenced during the revocation sentencing hearing statements by the victim and her mother from the original sentencing hearing, when, in fact, neither provided statements. Bilotti claims the court "obviously considered this nonexistent testimony as highly aggravating factors, as he indicates quite clearly ... 'So, I mean this is a very serious offense.'"

To establish a due process violation at sentencing, a defendant must prove by clear and convincing evidence that inaccurate information was provided to the circuit court, and that the court actually relied upon the inaccurate information. *See State v. Tiepelman*, 2006 WI 66, ¶2, 291 Wis. 2d 179, 717 N.W.2d 1. Whether the court actually relied on the incorrect information at sentencing is based upon whether the court gave "explicit attention" or "specific consideration" to it, so that the misinformation formed part of the basis for the sentence. *Id.*, ¶¶14, 26; *State v. Travis*, 2013 WI 38, ¶22, 347 Wis. 2d 142, 832 N.W.2d 491.

Our independent review of the record discloses that the circuit court simply misspoke when it stated that the victim and her mother "or one of them" addressed the court in strong terms at the original sentencing, expressing anger and violation of trust. In fact, it was the victim's grandmother who addressed the court in that fashion. Despite the court confusing the grandmother with the victim and her mother, there is no arguable merit to any argument that the court relied upon inaccurate information when sentencing Bilotti. *See Tiepelman*, 291 Wis. 2d 179, ¶2.

The specific identity of the family member who expressed upset at the original sentencing hearing was not material to the sentence imposed after revocation in the present case. Instead, the circuit court relied on the fact that a family member was angry about the emotional harm and the violation of trust that occurred when Bilotti committed these crimes against the victim. Therefore, the court did not actually rely on the identity of the family member who expressed the anger when sentencing Bilotti after revocation—the court relied on the fact that the crime violated trust and caused pain to the victim and her family.

The circuit court discussed the gravity of the offense, and it noted that Bilotti took advantage “of a person who is underage, and not only that but it was the daughter of this friend, this person that Vincent had a relationship with. I mean they are all aggravating circumstances.” The court also reflected on the crime’s impact on the victim and her family, noting the seriousness of the offense and that the crime was “more than just we’re picking on someone because he’s got normal desires.” Describing again the case as “serious,” the court stated, “I would argue that it was ostensibly [sic] a prison case at the original sentencing ... so Vincent was given a chance at that time.” The court clearly stated its reasons for the sentence and properly supported its decision.

In fact, Bilotti conceded that his crime caused pain to the victim and her family. He apologized to the family in his allocution at the original sentencing, agreeing that he violated their trust, “made life very hard for them and no doubt for the rest of their family.” He also expressed remorse about the crime’s long-term impact: “I cannot imagine the repercussions of my actions on [the victim’s] personal life, relationships and development, and social interactions.” Bilotti concluded “I have to admit I’m the reason for what may become a defining problem in her life.”

At the sentencing after revocation, Bilotti again apologized to the victim and her family, stating, “Sex offender therapy taught me some of the ways my actions may have affected them, and for me the worst part of my sentence is I’ll never know whether they are okay and what repercussions my actions continue to have on their lives.” Accordingly, Bilotti cannot prove by clear and convincing evidence that the circuit court’s misstatement about the identity of the family member who spoke at the original sentencing formed part of the basis for the sentence imposed after revocation. *See Tjepelman*, 291 Wis. 2d 179, ¶¶14, 26.

Bilotti also argues in his response to the no-merit report that the internet ban “constitutes a violation of my first amendment rights.” Bilotti contends his probation “was revoked not for breaking the law or for attempting to re-offend, but merely for watching Netflix, reading Craigslist postings, and looking at very legal and age appropriate pornography on commercial websites where the paid actors[’] ages were never in question.” He also argues “there is no proven causal relationship between the viewing of age appropriate legal pornography and the abuse of women or sexual assault.” The validity of the probation revocation, however, is not the proper subject of the present appeal. As mentioned previously, this court’s review is limited to issues arising from the sentencing after revocation. *See State ex rel. Flowers v. DHSS*, 81 Wis. 2d 376, 384, 260 N.W.2d 727 (1978).

Therefore,

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

IT IS FURTHER ORDERED that attorney Susan Alesia is relieved of further representing Vincent Hunter Bilotti in this matter. *See* WIS. STAT. RULE 809.32(3).

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

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*