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DISTRICT II

August 19, 2020

To:

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

2020AP282-CRNM State of Wisconsin v. Everett Clinton Bergemann, Jr.
(L.C. #2012CF647)

Before Neubauer, C.J., Gundrum and Davis, 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).

Everett Clinton Bergemann, Jr., appeals from a judgment convicting him of battery by a prisoner as a repeater. His 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). Bergemann received a copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the report and an independent review of the record, we conclude that the judgment may be summarily affirmed because there are no issues with arguable merit for appeal. *See* WIS. STAT. RULE 809.21.

Bergemann was convicted following a no contest plea to battery by a prisoner as a repeater. The circuit court withheld sentence and placed Bergemann on probation. His probation was later revoked due to multiple rules violations, and he appeared before the court for sentencing after revocation. There, the court imposed a sentence of four years, six months of initial confinement and two years of extended supervision. This no-merit appeal follows.

The no-merit report addresses whether the circuit court properly exercised its discretion in imposing its sentence after revocation. This court is satisfied that the no-merit report correctly analyzes the issue it raises as without merit, and this court will not discuss it further.

Our review of the record discloses no other potential issues for appeal.² Accordingly, this court accepts the no-merit report, affirms the judgment of conviction, and discharges appellate counsel of the obligation to represent Bergemann further in this appeal.

Upon the foregoing reasons,

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

² Any challenge to the underlying conviction is outside the scope of this appeal. *See State ex rel. Marth v. Smith*, 224 Wis. 2d 578, 582 n.5, 592 N.W.2d 307 (Ct. App. 1999). Review of probation revocation is by way of certiorari review to the court of conviction. *Id.* at 583.

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

IT IS FURTHER ORDERED that Attorney Gregory Bates is relieved of further representation of Everett Clinton Bergemann, Jr., 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