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DISTRICT IV

October 29, 2020

To:

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

2019AP698-CRNM State of Wisconsin v. Rachel Ann Belanger (L.C. # 2014CF1456)

Before Kloppenburg, Graham, and Nashold, 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).

Rachel Belanger appeals a judgment sentencing her to prison following the revocation of her probation in Rock County Circuit Court case number 2014CF1456. Attorney Vicki Zick has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32

(2017-18);¹ *Anders v. California*, 386 U.S. 738, 744 (1967); and *State ex rel. McCoy v. Wisconsin Court of Appeals*, 137 Wis. 2d 90, 403 N.W.2d 449 (1987), *aff'd*, 486 U.S. 429. The no-merit report addresses the single issue of whether the circuit court properly exercised its sentencing discretion. Belanger was sent a copy of the report, but has not filed a response. Upon reviewing the entire record, as well as the no-merit report, we conclude that there are no arguably meritorious appellate issues.

We first note that an appeal from a sentence following revocation does not bring an underlying conviction before this court. *State v. Drake*, 184 Wis. 2d 396, 399, 515 N.W.2d 923 (Ct. App. 1994). Nor can an appellant challenge the validity of any probation revocation decision in this proceeding. *See State ex rel. Flowers v. DHSS*, 81 Wis. 2d 376, 384, 260 N.W.2d 727 (1978) (probation revocation is independent from the 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 way of certiorari to the court of conviction). The only potential issue for appeal is the circuit court's imposition of sentence following revocation.

Our review of a sentence determination begins “with the presumption that the trial court acted reasonably, and the defendant must show some unreasonable or unjustifiable basis in the record for the sentence.” *State v. Krueger*, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). Here, the record shows that Belanger was afforded the opportunity to comment on the revocation materials and to address the court prior to sentencing. The circuit court considered the standard sentencing factors and explained their application to this case. *See generally State*

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

v. Gallion, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. Regarding the severity of the offense, the court stated that the offense in this case, retail theft, was “troubling in the sense of the amount,” but was not a violent offense. With respect to the defendant’s character and rehabilitative needs, the court stated that Belanger “has the potential to be a productive member of the community” but that she poses a risk to the public and to her children until she addresses her addiction to illegal substances. The court noted that, although Belanger had experienced periods of success while on probation, she had struggled in the past year. The court concluded that a prison term was necessary both for the purpose of punishment and to provide Belanger with the opportunity for rehabilitation.

In this case, Belanger faced up to three and a half years of imprisonment for the crime of retail theft of merchandise valued more than \$500 but not exceeding \$5,000, a Class I felony. *See* WIS. STAT. §§ 943.50(1m)(b) and (4)(bf); 939.50(3)(i). The court imposed one year of initial confinement and two years of extended supervision, to run consecutive to Belanger’s sentence in another case. The court awarded 229 days of sentence credit, and found Belanger eligible for the Challenge Incarceration Program and the Substance Abuse Program.

The sentence imposed was within the applicable penalty range and was not “so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances.” *State v. Grindemann*, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507 (quoted source omitted). Accordingly, we agree with counsel that any challenge to the circuit court’s exercise of sentencing discretion would be without arguable merit.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment. *See State v. Allen*, 2010 WI 89, ¶¶81-82, 328 Wis. 2d 1, 786 N.W.2d 124. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

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

IT IS FURTHER ORDERED that Attorney Zick is relieved of any further representation of Rachel Belanger in this matter. *See* WIS. STAT. RULE 809.32(3).

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

Sheila Reiff
Clerk of Court of Appeals