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DISTRICT III

September 14, 2021

To:

Hon. Kevin G. Klein
Circuit Court Judge
Electronic Notice

Penny Huck
Clerk of Circuit Court
Price County
Electronic Notice

Mark T. Fuhr
Electronic Notice

Melissa M. Petersen
Electronic Notice

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

James L. LaPlant
234 S. Avon Avenue
Phillips, WI 54555

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

2018AP2465-CRNM State of Wisconsin v. James L. LaPlant
2018AP2466-CRNM (L. C. Nos. 2016CM19, 2016CM20)

Before Stark, P.J.¹

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 James LaPlant has filed a no-merit report pursuant to WIS. STAT. RULE 809.32, concluding there is no basis for challenging the sentences imposed after the revocation of LaPlant's probation. LaPlant was informed of his right to respond to the report and he has filed a response challenging the revocation of his probation. Upon our independent review of the records as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2019-20). All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

there is no arguable merit to any issue that could be raised on appeal. We therefore summarily affirm the judgments of conviction and relieve counsel of further representation of LaPlant. *See* WIS. STAT. RULE 809.21.

LaPlant pled no contest to misdemeanor charges of battery as a domestic abuse incident and possession of THC. The circuit court withheld sentence and imposed a two-year term of probation in each case, with twenty days' conditional jail time on the battery charge. LaPlant's probation was revoked after police found marijuana and drug paraphernalia in a vehicle in which LaPlant was a passenger.

At the sentencing hearing following revocation, the circuit court observed that the conditional jail time LaPlant had served had been an insufficient disincentive to prevent him from engaging in additional criminal activity. The court stated that there was a need for both punishment and protection of the public. The court then sentenced LaPlant to consecutive terms of five months' jail on the battery conviction and thirty days' jail on the THC conviction, with eighty-five days' sentence credit.

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). The only potential issues for these appeals relate to the circuit court's imposition of sentence following revocation.

We agree with counsel's description, analysis and conclusion that any challenge to the sentences imposed following revocation would lack arguable merit. Our independent review of the records discloses no other potential issues for appeal. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders*.

Therefore,

IT IS ORDERED that the judgments of conviction are summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Melissa M. Petersen is relieved of any further representation of James LaPlant in these matters. *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