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DISTRICT IV

November 4, 2021

To:

Hon. Mark L. Goodman
Circuit Court Judge
Electronic Notice

Shirley Chapiewsky
Clerk of Circuit Court
Monroe County Courthouse
Electronic Notice

Winn S. Collins
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Leonard D. Kachinsky
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Stanley G. Baker 240649
Stanley Correctional Inst.
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You are hereby notified that the Court has entered the following opinion and order:

2020AP1240-CRNM State of Wisconsin v. Stanley G. Baker (L.C. # 2012CF449)

Before Blanchard, P.J., Kloppenburg, and Graham, 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).

Attorney Leonard Kachinsky, appointed counsel for appellant Stanley Baker, has filed a no-merit report seeking to withdraw as appellate counsel pursuant to WIS. STAT. § 809.32(3) (2019-20)¹ and *Anders v. California*, 386 U.S. 738 (1967). The no-merit report addresses whether there would be arguable merit to a challenge to the sentence imposed by the circuit court. Baker was sent a copy of the report, but has not filed a response. As directed by a prior

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

order of this court, counsel has filed a supplemental no-merit report. Upon our independent review of the entire record, as well as the no-merit report and supplemental no-merit report, we agree with counsel's assessment that there are no arguably meritorious appellate issues.

Baker was sentenced after revocation of probation in this case on November 5, 2019. The circuit court imposed a total sentence of four-and-a-half years of initial confinement and four-and-a-half years of extended supervision.

The appeal in this case from the sentence following revocation does not bring the underlying conviction before us. See *State v. Drake*, 184 Wis. 2d 396, 399, 515 N.W.2d 923 (Ct. App. 1994). Additionally, the validity of the probation revocation itself is not before us in this appeal. See *State ex rel. Flowers v. DHSS*, 81 Wis. 2d 376, 384, 260 N.W.2d 727 (1978) (probation revocation independent from 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 petition for certiorari in circuit court). The only potential postconviction or appellate issues at this point in the proceedings relate to sentencing 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 complained of.”² *State v. Krueger*, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). Here, the court explained that it considered facts pertinent to the standard sentencing factors and objectives, including the protection of the public, the gravity of the

² A circuit court's duty at sentencing after revocation is the same as its duty at an original sentencing. See *State v. Wegner*, 2000 WI App 231, ¶7 n.1, 239 Wis. 2d 96, 619 N.W.2d 289.

offense, and Baker's rehabilitative needs. *See State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. The sentence was within the maximum Baker faced and, given the facts of this case, there would be no arguable merit to a claim that the sentence was unduly harsh or excessive. *See State v. Stenzel*, 2004 WI App 181, ¶21, 276 Wis. 2d 224, 688 N.W.2d 20 (a sentence is unduly harsh or excessive “only where the sentence is 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” (quoted source omitted)).

By prior order, this court questioned whether there would be arguable merit to a challenge to the circuit court's decision on Baker's postconviction motion for additional sentence credit. In his supplemental no-merit report, counsel explains his conclusion that further proceedings on this issue would lack arguable merit. We agree with the analysis set forth in the supplemental no-merit report, and we do not address this issue further.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32(3).

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

IT IS FURTHER ORDERED that Attorney Leonard Kachinsky is relieved of any further representation of Stanley Baker in this matter. *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