OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS
110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT III

December 7, 2021

To:

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Circuit Court Judge
Electronic Notice

Susan Schaffer
Clerk of Circuit Court
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Gary King
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Melissa M. Petersen
Electronic Notice

Peter J. Tousignant 367457
Dodge Correctional Inst.
P.O. Box 700
Waupun, WI 53963-0700

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

2019AP1946-CRNM State of Wisconsin v. Peter J. Tousignant (L. C. No. 2004CF711)

Before Stark, P.J., Hruz and Gill, 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 Peter Tousignant has filed no-merit report concluding there is no basis to challenge Tousignant's sentence after revocation of his probation. Tousignant 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 (2019-20).[1]

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

Tousignant drove from Milwaukee to an Eau Claire hotel to have sex with a fourteen-year-old girl he met via the internet while he was on probation for having sexual contact with his five-year-old sister. Following a guilty plea to the present offense, sentence was withheld and he was ordered to serve twenty years' probation, consecutive to the sentence he was then serving in the case involving his sister.[2]

Tousignant's probation in the present case was then revoked for numerous rules violations, including gaining access to the internet without prior agent approval; accessing and establishing a profile on a social networking site without prior agent approval; providing an agent false information; and being terminated from the sex offender treatment program. The revocation summary included a recommendation for Tousignant to serve ten to eleven years' initial confinement and five to six years' extended supervision. The circuit court imposed a sentence after revocation consisting of twenty years' initial confinement and ten years' extended supervision. The court subsequently denied Tousignant's pro se motion that the court construed as a motion to reconsider, which argued that the sentence after revocation was excessive.

On appeal from a sentence after revocation, our review is limited to the sentencing proceeding after 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 Tousignant after revocation of

[2] The circuit court had imposed ten years' probation in the case involving his sister, but Tousignant sexually reoffended and engaged in repeated violations having a nexus with his sexual deviancy, all of which resulted in his probation being revoked, and, subsequently, his extended supervision also being revoked. Tousignant thus did not begin serving the twenty-year probationary term until the sentence in the case involving his sister was completed.

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.

Tousignant's response to the no-merit report raises two issues. First, although conceding he "did indeed commit four grievous violations of my parole [sic]," Tousignant asserts that he "agreed to sign off on the revocation with the understanding that the Department of Community Corrections was asking for ten to eleven years." Tousignant argues that had he known the circuit court "was going to disregard said recommendation and double the time, I would have fought the revocation." In Tousignant's opinion, "twenty years is not warranted." On an appeal of a sentence after revocation, however, we will not review the original judgment of conviction, the underlying plea process, or the propriety of the revocation. ***Id.***

Tousignant also argues that his attorney for the sentencing after revocation "was appointed to me very late in the process." Tousignant claims: "I met with him for the first and only time for about thirty minutes literally an hour before my sentencing hearing. It felt all too rushed."

Tousignant appeared at the sentencing after revocation hearing pro se, and the hearing was continued after Tousignant stated that he wished to have counsel, and that he "wrote to somebody and they said that counsel would be appointed." Eleven days later, the hearing was reconvened. Tousignant's counsel stated that he had received a copy of the revocation packet, had ample time to review it with Tousignant, and that there were no corrections. Tousignant did not refute counsel's representations. The following was then discussed:

> THE COURT: And how old is Mr. Tousignant?
>
> [The Prosecutor]: Well, they said 37. Let me see.

> [Defense counsel]: That is correct.
>
> THE COURT: And do we have any agreements?
>
> [Defense counsel]: I was just appointed to the case yesterday, so we haven't really had time to come to an agreement, but I'm prepared to argue sentencing.
>
> THE COURT: Well, I don't want to do this as a rush, if you think that it would benefit your client to talk.
>
> [Defense counsel]: We spoke for about 20 minutes, half hour in the jail. If he's comfortable proceeding, I feel like I'm prepared.
>
> THE COURT: Okay.

Again, Tousignant remained silent. The State and defense counsel then presented their respective sentencing arguments. The parties also agreed on the number of days of sentence credit. The circuit court then stated:

> THE COURT: Mr. Tousignant, would you like to say anything?
>
> [Tousignant]: (Indicating.)
>
> THE COURT: And that is a no?
>
> [Tousignant]: That's a no. I'm sorry.
>
> THE COURT: Okay.
>
> [Tousignant]: Thank you.
>
> THE COURT: You—I appreciate that when we're talking, you—I could see you say no. However, the record can't reflect that you nodded or said no. Okay?
>
> [Tousignant]: I apologize.
>
> ….
>
> THE COURT: No, you don't have to apologize. I just want to make sure the record is accurate.

Tousignant cannot remain silent before the circuit court and then attempt to "sandbag" the court by claiming for the first time on appeal that "it felt all too rushed"—particularly when the court specifically stated that it did not "want to do this as a rush, if you think it would benefit your client to talk." *See* ***State v. Caban***, 210 Wis. 2d 597, 604-05, 563 N.W.2d 501 (1997). We also note that Tousignant failed to raise this issue in his pro se motion for reconsideration. Moreover, the two situations in which we may invoke our discretionary reversal authority are inapplicable here, as there is no probability that justice for any reason miscarried or that the real controversy has not been fully tried. *See* ***id.*** at 609-10.

Therefore, upon the foregoing,

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

IT IS FURTHER ORDERED that Attorney Melissa M. Petersen is relieved of further representing Peter Tousignant 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