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DISTRICT II

January 12, 2022

To:

Hon. Phillip A. Koss
Circuit Court Judge
Electronic Notice

Kristina Secord
Clerk of Circuit Court
Walworth County
Electronic Notice

Zeke Wiedenfeld
Electronic Notice

Vicki Zick
Electronic Notice

Jamel L. Davis
6321 24th Street
Kenosha, WI 53140

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

2020AP684-CRNM	State of Wisconsin v. Jamel L. Davis (L.C. #2017CF34)
2020AP685-CRNM	State of Wisconsin v. Jamel L. Davis (L.C. #2017CM352)
2020AP686-CRNM	State of Wisconsin v. Jamel L. Davis (L.C. #2017CM353)

Before Neubauer, J.¹

Jamel L. Davis appeals from three judgments of conviction in these consolidated no-merit appeals. Appointed appellate counsel has filed no-merit reports pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Davis was sent copies of the

¹ These consolidated appeals are decided by one judge pursuant to WIS. STAT. § 752.31(2)(f). The appeals were consolidated for disposition after counsel filed a separate no-merit report in each appeal. All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

reports and has not filed a response.² Upon consideration of the no-merit reports and an independent review of the record as mandated by *Anders* and RULE 809.32, we summarily affirm the judgments because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

Davis pled guilty to and was convicted of one count of misdemeanor theft, one count of obstructing an officer, one count of disorderly conduct, and two counts of receiving stolen property. The circuit court withheld sentence and ordered three years of probation. Davis's probation was later revoked, and he was returned to court for sentencing after revocation. The court sentenced Davis to six months of jail time on the theft offense, six months of jail time on the obstructing offense, and ninety days of jail time on the disorderly conduct offense, with all of those sentences to run concurrent to each other. The court sentenced Davis to ninety days of consecutive jail time on each of the offenses for receiving stolen property.

An appeal from a revocation sentence 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 revocation is not before us. *See State ex rel. Flowers v. DHSS*, 81 Wis. 2d 376, 384, 260 N.W.2d 727 (1978) (probation revocation is independent of underlying criminal action); *see also State ex rel. Johnson v. Cady*, 50 Wis. 2d 540, 550, 185 N.W.2d 306 (1971)

² Davis was also sent court notices of his right to file a response, but the notices were returned undeliverable. In response to previous orders of this court, counsel has submitted letters describing her unsuccessful efforts to locate an updated address or other updated contact information for Davis. Counsel also states that Davis made no further contact with counsel after this court's notices were returned undeliverable. A defendant has an obligation to keep counsel informed of contact information. Under the circumstances, we conclude that Davis has effectively forfeited his right to respond to the no-merit reports. *See State v. Ndina*, 2009 WI 21, ¶29, 315 Wis. 2d 653, 761 N.W.2d 612 (failure to make the timely assertion of a right is a forfeiture of the right).

(review of probation revocation is by petition for certiorari in circuit court). The only potential issues at this point in the proceedings are those relating to sentencing after revocation.

The circuit court's duty at a sentencing after revocation is the same as its duty at the original sentencing. *State v. Wegner*, 2000 WI App 231, ¶7 n.1, 239 Wis. 2d 96, 619 N.W.2d 289. There is a "presumption that the [circuit] court acted reasonably, and the defendant must show some unreasonable or unjustifiable basis in the record for the sentence complained of." *State v. Krueger*, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984).

We agree with counsel's assessment that there is no arguable merit to challenging the circuit court's exercise of its sentencing discretion. Davis's sentences were within the applicable range, and the record shows that the circuit court considered the facts relevant to the standard sentencing factors and objectives. *See State v. Gallion*, 2004 WI 42, ¶¶37-49, 270 Wis. 2d 535, 678 N.W.2d 197. The court did not consider any improper factors.

Counsel raises the question of whether there is arguable merit to pursuing an issue relating to the court's pronouncement of sentence on the receiving stolen property offenses. Specifically, counsel addresses whether the court's pronouncement was ambiguous as to whether the sentences on those offenses was intended to be consecutive to, or instead concurrent with, the sentences on Davis's other offenses. We agree with counsel that there is no arguable merit to this issue. Even if the court's pronouncement was arguably ambiguous, the record as a whole shows that the court intended the sentences to be consecutive. *See State v. Oglesby*, 2006 WI App 95, ¶¶20-21, 33-34, 292 Wis. 2d 716, 715 N.W.2d 727 (examining the record as a whole to determine the court's sentencing intent).

Our review of the record discloses no other potential issues for appeal.³

Therefore,

IT IS ORDERED that the judgment of conviction in case No. 2017CM353 shall be modified to state that the sentence is consecutive to the sentences in case Nos. 2017CF34 and 2017CM352, that the judgments of conviction are summarily affirmed as modified, and that the cause is remanded for entry of the modified judgment. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Vicki Zick is relieved of any further representation of Jamel L. Davis 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

³ As counsel notes, there is a clerical error in the judgment of conviction for one of the receiving stolen property offenses, case No. 2017CM353. The judgment states that the sentence is consecutive to the sentences in case Nos. 2017CF34 and 2017CM353. The judgment should state that the sentence is consecutive to the sentences in case Nos. 2017CF34 and 2017CM352. Upon remittitur, the circuit court shall modify the judgment of conviction in case No. 2017CM353 to state that the sentence is consecutive to the sentences in case Nos. 2017CF34 and 2017CM352.