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DISTRICT IV

April 7, 2022

To:

Hon. Ellen K. Berz
Circuit Court Judge
Electronic Notice

Vicki Zick
Electronic Notice

Carlo Esqueda
Clerk of Circuit Court
Dane County Courthouse
Electronic Notice

Billy R. Strang
Dane County Jail
115 W. Doty St.
Madison, WI 53703

Will R. Davis
Electronic Notice

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

2021AP586-CRNM State of Wisconsin v. Billy R. Strang (L.C. # 2018CM258)

Before Fitzpatrick, 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).

Attorney Vickie Zick has filed a no-merit report seeking to withdraw as appellate counsel for appellant Billy Strang. See WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit report addresses the sentence imposed by the circuit court following revocation. Strang was sent a copy of the report but has not filed a response. Upon

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

independently reviewing the entire record, as well as the no-merit report, I agree with counsel's assessment that there are no arguably meritorious appellate issues. I affirm.

In October 2018, Strang was convicted on his guilty plea of misdemeanor battery, as domestic abuse and as a repeater, and placed on one year of probation with sentence withheld. The Department of Corrections subsequently revoked Strang's probation. The court sentenced Strang to eighteen months of imprisonment, with twelve months of initial confinement followed by six months 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 appellate issues at this point in the proceedings relate to sentencing following revocation.

This court's 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

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.

the standard sentencing factors and objectives, including Strang’s rehabilitative needs, the need to protect the public, and the gravity of the offense. *See State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. 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)). Additionally, the court granted Strang 133 days of sentence credit, on counsel’s stipulation. I discern no basis to challenge the circuit court’s sentencing.

Upon this court’s independent review of the record, the court has found no other arguable basis for reversing the judgment of conviction. I 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 of conviction is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Vickie Zick is relieved of any further representation of Billy Strang 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