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DISTRICT II

April 27, 2022

To:

Hon. Paul Bugenhagen Jr.
Circuit Court Judge
Electronic Notice

Monica Paz
Clerk of Circuit Court
Waukesha County Courthouse
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Winn S. Collins
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Nancy A. Dominski
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Susan Lee Opper
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Craig E. Joers, #432585
Vernon County Jail
1320 Bad Axe Ct.
Viroqua, WI 54665

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

2021AP1008-CRNM State of Wisconsin v. Craig E. Joers (L.C.#2014CF1340)

Before Gundrum, P.J., Neubauer and Grogan, 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).

Craig E. Joers appeals from a judgment sentencing him after revocation of his probation. Appellate counsel, Nancy A. Dominski, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20)¹ and *Anders v. California*, 386 U.S. 738 (1967). Joers received a copy of the report, was advised of his right to file a response, and has responded. Upon this court's independent review of the record as mandated by *Anders*, counsel's report, and Joers's response,

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

we conclude that there is no arguable merit to any issue which could be raised on appeal. We therefore summarily affirm the judgment.

In December 2014, an Information charged Joers with one count of first-degree sexual assault of a child under the age of thirteen, one count of sexual assault of a child under the age of sixteen, one count of operating a motor vehicle while intoxicated as a fifth or sixth offense (OWI), one count of attempting to flee or elude a traffic officer, and one count of operating a motor vehicle with a prohibited alcohol content as a fifth or sixth offense. Joers pled guilty to an amended charge of second-degree sexual assault of a child and OWI as a fifth or sixth offense. The other sexual assault charge was dismissed outright, while the remaining charges were dismissed and read in at sentencing. The circuit court sentenced Joers to four years of incarceration on the OWI charge, bifurcated as two years of initial confinement and two years of extended supervision. The circuit court withheld sentence on the sexual assault charge and imposed eight years' probation.

The Department of Corrections began proceedings to revoke Joers's probation following his May 2020 arrest for possession of child pornography. According to the revocation order, Joers possessed child pornography, consumed alcohol, and had contact with the victim. Joers admitted to the violations and chose to waive his final revocation hearing. Joers's probation was subsequently revoked.

At the sentencing-after-revocation hearing, the circuit court imposed a twenty-year sentence bifurcated as seven years of initial confinement and thirteen years of extended supervision. Joers appeals.

An appeal from a judgment imposing sentence after probation 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 the subject of 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). This court’s review is therefore limited to whether the circuit court properly exercised its sentencing discretion, which is the first issue counsel raises in her no-merit report.

Sentencing after probation revocation is reviewed “on a global basis, treating the latter sentencing as a continuum of the” original sentencing hearing. *See State v. Wegner*, 2000 WI App 231, ¶7, 239 Wis. 2d 96, 619 N.W.2d 289. Thus, at sentencing after probation revocation, we expect the circuit court will consider many of the same objectives and factors that it is expected to consider at the original sentencing hearing. *See id.*; *and cf. State v. Brown*, 2006 WI 131, ¶¶20-21, 298 Wis. 2d 37, 725 N.W.2d 262. Here, a different judge presided over the sentencing-after-revocation hearing than the one who presided at the original sentencing. However, the second judge stated that he had “extensively” reviewed the record and was familiar with the particulars of Joers’s case. *See State v. Walker*, 2008 WI 34, ¶3, 308 Wis. 2d 666, 747 N.W.2d 673; *State v. Reynolds*, 2002 WI App 15, ¶¶9, 14, 249 Wis. 2d 798, 643 N.W.2d 165; *Wegner*, 239 Wis. 2d 96, ¶14.

Our review of the record confirms that the circuit court appropriately considered relevant sentencing factors, including the seriousness of the offenses, Joers’s character, and the need to protect the public. *See State v. Gallion*, 2004 WI 42, ¶¶ 39-46, 270 Wis. 2d 535, 678 N.W.2d

197. The circuit court was particularly thorough in its discussion about the gravity of the offenses. The circuit court also recognized Joers's remorse, but emphasized the need to protect community.

In his response to counsel's no-merit report, Joers contends that he was "shocked and stunned" by the State's sentencing recommendation at the sentencing-after-revocation hearing of eight years of initial confinement followed by twelve years of extended supervision. Joers states that he was assured by his counsel that the State would recommend four to five years of initial confinement followed by four to five years of extended supervision. The record does not support Joers's "shock." While the Department of Corrections recommended four to five years of initial confinement followed by four to five years of extended supervision, there was no agreement from the State; therefore, Joers could not have relied on any alleged guaranteed recommendation from the State. The parties were free to argue at the sentencing-after-revocation hearing. Joers was aware of the maximum penalty he faced and the State's recommendation was within that maximum. The sentence ultimately imposed was within the range authorized by law, *see State v. Scaccio*, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449, and therefore is not so excessive so as to shock the public's sentiment, *see Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). There would be no arguable merit to a challenge to the sentencing court's discretion.

Counsel's no-merit report also addresses whether there would be any arguable merit to a claim of ineffective assistance of counsel. We are satisfied that the no-merit report appropriately addresses this issue and that there would be no arguable merit to such a claim.

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

Upon the foregoing, therefore,

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

IT IS FURTHER ORDERED that Attorney Nancy A. Dominski is relieved of further representation of Craig E. Joers in this matter.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals