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DISTRICT III

June 1, 2022

To:

Hon. Sue E. Bischel
Circuit Court Judge
Electronic Notice

John VanderLeest
Clerk of Circuit Court
Brown County Courthouse
Electronic Notice

Leonard D. Kachinsky
Electronic Notice

Caleb Saunders
Electronic Notice

Kenneth Ernel Williams-Butler 686060
Fox Lake Correctional Inst.
P.O. Box 200
Fox Lake, WI 53933-0200

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

2021AP1418-CRNM State of Wisconsin v. Kenneth Ernel Williams-Butler
(L. C. No. 2019CF806)

Before Gill, 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).

Counsel for Kenneth Ernel Williams-Butler has filed a no-merit report pursuant to WIS. STAT. RULE 809.32, concluding there would be no arguable merit to an appeal challenging the sentence imposed after revocation of Williams-Butler's probation. Williams-Butler was informed of his right to respond to the report and has not responded. Upon our independent

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

review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude there is no arguable merit to any issue that could be raised on appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

On October 11, 2019, Williams-Butler pled no contest to five misdemeanor charges: bail jumping; criminal damage to property as a repeater; battery with use of a dangerous weapon as a repeater; resisting an officer as a repeater; and disorderly conduct as a repeater. The circuit court withheld sentence and placed Williams-Butler on three years of probation, with seven months in jail as a condition. Williams-Butler's probation was later revoked. On March 26, 2021, the court imposed an aggregate sentence of two years' initial confinement followed by two years' extended supervision.

The no-merit report first addresses whether Williams-Butler is permitted to raise issues that stem from proceedings prior to the sentence after revocation; specifically, Williams-Butler would like to argue that his *Miranda*² rights were violated at the time of his arrest, that he was denied his right to a speedy trial, and that he received ineffective assistance of trial counsel. An appeal from a judgment imposing sentence after probation revocation does not bring the underlying conviction before this court. *See State v. Drake*, 184 Wis. 2d 396, 399, 515 N.W.2d 923 (Ct. App. 1994). Williams-Butler did not appeal his underlying conviction, so he is prohibited from raising issues pertaining to it. There would be no arguable merit to an appellate challenge raising these issues in the context of this appeal.

² *See Miranda v. Arizona*, 384 U.S. 436 (1966).

The no-merit report next addresses whether there would be arguable merit to a claim that the circuit court improperly exercised its sentencing discretion. Before imposing sentence, the court considered the seriousness of the offense; Williams-Butler's character; Williams-Butler's poor performance on probation; and other appropriate factors in accord with *State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. It cannot reasonably be argued that Williams-Butler's sentence is so excessive as to shock public sentiment. See *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). Moreover, the sentence that the court imposed was well within the limits of the maximum sentence allowed by law and therefore is presumed to be reasonable. See *State v. Grindemann*, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507. Therefore, we conclude that there would be no arguable merit to a challenge to the sentence.

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

Therefore,

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

IT IS FURTHER ORDERED that Attorney Leonard Kachinsky is relieved of further representing Kenneth Ernel Williams-Butler 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