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DISTRICT IV

September 9, 2022

To:

Hon. Robert F. Dehring
Circuit Court Judge
Electronic Notice

Cindy Hamre Incha
Clerk of Circuit Court
Jefferson County Courthouse
Electronic Notice

Theresa A. Beck
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Vicki Zick
Electronic Notice

Randolph L. Didomizio 195962
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P.O. Box 233
Black River Falls, WI 54615-0233

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

2021AP636-CRNM	State of Wisconsin v. Randolph L. Didomizio (L.C. # 2015CF354)
2022AP1077-CRNM	State of Wisconsin v. Randolph L. Didomizio (L.C. # 2015CF13)

Before Blanchard, P.J., Fitzpatrick, and Nashold, 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).

Attorney Vicki Zick, appointed counsel for Randolph Didomizio, has filed a no-merit report seeking to withdraw as appellate counsel pursuant to WIS. STAT. RULE 809.32 (2019-20)¹ and *Anders v. California*, 386 U.S. 738 (1967). Didomizio was sent a copy of the report and has not filed a response. Upon consideration of the report and an independent review of the record,

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 that could be raised on appeal. Accordingly, we affirm.

As part of a plea agreement, Didomizio pled guilty in two circuit court cases to one count of misdemeanor battery, one count of disorderly conduct, and one count of felony bail jumping.² The circuit court withheld sentence and ordered two years of probation on the misdemeanor offenses and three years of concurrent probation on the felony bail jumping offense. Didomizio's probation was later revoked, and he was returned to court for sentencing after revocation.

On the two misdemeanor offenses, the court sentenced Didomizio to the maximum terms of nine months in jail and ninety days in jail, *see* WIS. STAT. §§ 940.19(1), 947.01(1), and 939.51(3) (2013-14), concurrent with one another but consecutive to any other sentence. On the felony bail jumping offense, the court sentenced Didomizio to one year of initial confinement and one year of extended supervision, consecutive to any other sentence. These consolidated no-merit appeals followed.³

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

² Didomizio also entered pleas in other circuit court cases that are not under review here.

³ One of these consolidated appeals, case No. 2022AP1077-CRNM, was initiated later in time. This court placed the earlier appeal, case No. 2021AP636-CRNM, on hold, which allowed time for transmittal of the record in case No. 2022AP1077-CRNM. We now lift the hold.

action); *see also State ex rel. Johnson v. Cady*, 50 Wis. 2d 540, 550, 185 N.W.2d 306 (1971) (review of probation revocation is by petition for certiorari in circuit court).

Thus, the only potential issues at this point 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.

The no-merit report addresses whether the circuit court erred in exercising its sentencing discretion. We agree with counsel that there is no arguable merit to this issue. The court considered the required sentencing factors along with other relevant factors, and the court did not rely on any inappropriate factors. *See State v. Gallion*, 2004 WI 42, ¶¶37-49, 270 Wis. 2d 535, 678 N.W.2d 197. As noted above, the court imposed the maximum jail terms on each of Didomizio's two misdemeanor offenses. However, as explained in the no-merit report, it would be frivolous to argue under the circumstances that this was an erroneous exercise of discretion. It would likewise be frivolous to argue that the sentences were unduly harsh or so excessive as to shock public sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We see no other basis on which Didomizio might challenge his sentences.

Our review of the record discloses no other potential issues.

Therefore,

IT IS ORDERED that the hold in case No. 2021AP636-CRNM is hereby lifted.

IT IS FURTHER ORDERED that the judgments are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Vicki Zick is relieved of any further representation of Randolph Didomizio 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