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DISTRICT IV

November 17, 2022

To:

Hon. Ellen K. Berz
Circuit Court Judge
Electronic Notice

Carlo Esqueda
Clerk of Circuit Court
Dane County Courthouse
Electronic Notice

Susan E. Alesia
Electronic Notice

Winn S. Collins
Electronic Notice

Yi Ding
4917 Marathon Drive
Madison, WI 53705

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

2021AP1400-CRNM	State of Wisconsin v. Yi Ding (L.C. # 2016CF1963)
2021AP1401-CRNM	State of Wisconsin v. Yi Ding (L.C. # 2016CF2023)

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 Susan Alesia has filed a no-merit report seeking to withdraw as appellate counsel for appellant Yi Ding. *See* WIS. STAT. RULE 809.32 (2019-20);¹ *Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit report addresses whether there would be arguable merit to any issues arising from the sentence imposed by the circuit court following the revocation of Ding's probation. Ding was sent a copy of the report, but has not filed a response. Upon our independent review of the no-merit report and the record, we agree with counsel's assessment

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

that there are no arguably meritorious appellate issues. We summarily affirm. *See* WIS. STAT. RULE 809.21.

In November 2016, Ding was convicted of strangulation and suffocation; manufacture or delivery of cocaine; and contact after domestic abuse arrest. The circuit court withheld sentence and imposed three years of probation. In March 2020, the Department of Corrections (DOC) revoked Ding’s probation. The court sentenced Ding to nine months of jail on the misdemeanor contact after a domestic abuse arrest, with 203 days of sentence credit, and a consecutive sentence totaling two years of initial confinement and three years of extended supervision on the felony convictions, with 269 days of sentence credit.

These appeals are from the sentences imposed following revocation of probation, and therefore do not bring the underlying convictions 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 these appeals. *See State ex rel. Flowers v. DHSS*, 81 Wis. 2d 376, 384, 260 N.W.2d 727 (1978) (probation revocation is 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 [circuit] 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 the standard sentencing factors and objectives, including Ding’s rehabilitative needs, the need to protect the public, and the gravity of the offenses. *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)). We agree with counsel’s assessment that further proceedings related to the sentence imposed after revocation would be wholly frivolous.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgments. We 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 judgments are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Susan Alesia is relieved of any further representation of Yi Ding in this matter. *See* WIS. STAT. RULE 809.32(3).

² A circuit court’s duties at a sentencing after revocation are the same as its duties at an original sentencing. *See State v. Wegner*, 2000 WI App 231, ¶7 n.1, 239 Wis. 2d 96, 619 N.W.2d 289.

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

Sheila T. Reiff
Clerk of Court of Appeals