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DISTRICT III

November 22, 2022

To:

Hon. Melissia R. Mogen
Circuit Court Judge
Electronic Notice

Jacqueline Baasch
Clerk of Circuit Court
Burnett County Courthouse
Electronic Notice

Frederick A. Bechtold
Electronic Notice

James Jay Rennieke
Burnett County District Attorney
7410 County Road K
Siren, WI 54872

Charles Robert Bentley
120 S. Oak Avenue
Bridgewater, SD 57319

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

2022AP780-CRNM State of Wisconsin v. Charles Robert Bentley
(L. C. No. 2020CM5)

Before Hruz, 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 Charles Bentley has filed a no-merit report pursuant to WIS. STAT. RULE 809.32, concluding that no grounds exist to challenge the sentence imposed after revocation of Bentley's probation. Bentley was informed of his right to file a response to the no-merit report, but he has not responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude that there is no arguable

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.

merit to any issue that could be raised on appeal. Therefore, we summarily affirm the judgment imposing sentence following the revocation of Bentley's probation. *See* WIS. STAT. RULE 809.21.

In January 2020, the State charged Bentley with misdemeanor battery and disorderly conduct, each as an act of domestic abuse. In October 2020, Bentley entered a guilty plea to the disorderly conduct charge, pursuant to a plea agreement. The misdemeanor battery charge was dismissed and read in. The parties jointly recommended that the circuit court withhold sentence and place Bentley on probation for one year. The court followed the joint recommendation. Bentley did not appeal his judgment of conviction.

Bentley's probation was subsequently revoked. The Department of Corrections recommended that the circuit court sentence Bentley to ninety days in jail. Bentley returned to court for a sentencing after revocation hearing on November 18, 2021. During the hearing, the State recommended that the court impose a sentence of ninety days in jail, with sentence credit for sixty-nine days. The defense, in turn, asserted that Bentley was entitled to eighty-two days of sentence credit and asked the court to impose "no further ... jail time."

The circuit court sentenced Bentley to ninety days in jail and awarded him eighty-two days of sentence credit. The court noted that, with good time, this amounted to a time-served sentence. The court also waived any remaining financial obligations, with the exception of the mandatory DNA surcharge.

The no-merit report asserts that an appeal from the sentence imposed after the revocation of Bentley's probation would be moot because Bentley has finished serving that sentence and is not subject to any collateral consequences as a result of the sentence. *See State v.*

Theoharopoulos, 72 Wis. 2d 327, 332-33, 240 N.W.2d 635 (1976); *see also State v. Walker*, 2008 WI 34, ¶14, 308 Wis. 2d 666, 747 N.W.2d 673. The no-merit report further asserts that even if this issue were not moot, there would be no arguable merit to a claim that the circuit court erroneously exercised its sentencing discretion following the revocation of Bentley’s probation.² For the reasons stated in the no-merit report, we agree with appellate counsel that any appeal from Bentley’s sentence after revocation would be moot and that, regardless, any claim that the court erroneously exercised its sentencing discretion would lack arguable merit. Accordingly, we do not address these issues further.

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

Therefore,

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

IT IS FURTHER ORDERED that Attorney Frederick A. Bechtold is relieved of his obligation to further represent Charles Bentley in this matter. *See* WIS. STAT. RULE 809.32(3).

² An appeal from a judgment imposing sentence after the revocation of probation 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) (explaining that probation revocation is independent from the underlying criminal action); *see also State ex rel. Johnson v. Cady*, 50 Wis. 2d 540, 550, 185 N.W.2d 306 (1971) (holding that judicial review of probation revocation is by petition for certiorari in the circuit court). Our review is limited to the validity of the sentence imposed following the revocation of Bentley’s probation.

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

Sheila T. Reiff
Clerk of Court of Appeals