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DISTRICT II

February 22, 2023

To:

Hon. Mark T. Slate
Circuit Court Judge
Electronic Notice

Amy Thoma
Clerk of Circuit Court
Green Lake County Courthouse
Electronic Notice

Winn S. Collins
Electronic Notice

David Malkus
Electronic Notice

Carla M. Czysz, #225778
Taycheedah Correctional Inst.
P.O. Box 3100
Fond du Lac, WI 54936-3100

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

2021AP1086-CRNM State of Wisconsin v. Carla M. Czysz (L.C. #2015CF35)

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

Carla M. Czysz appeals from a judgment of conviction imposing sentence after the revocation of her probation and from a postconviction order denying her resentencing motion. Her appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22)¹ and *Anders v. California*, 386 U.S. 738 (1967). Czysz received a copy of the report, was advised of her right to file a response, and has filed a response. Upon consideration of the report, Czysz's response, and an independent review of the record, we conclude that the judgment and order may

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

be summarily affirmed because there are no issues with arguable merit for appeal. *See* WIS. STAT. RULE 809.21.

After Czysz sold a small amount of heroin to a confidential informant, the State charged her with one count of heroin delivery, less than three grams, on or near a park. Pursuant to a plea agreement, the State moved to dismiss the on-or-near-a-park penalty enhancer, and Czysz pled guilty to the sole-delivery count. The court withheld sentence and placed Czysz on four years' probation. Czysz was revoked from probation. The circuit court then sentenced Czysz and imposed a sentence of three years and six months' initial confinement and three years and six months' extended supervision. Czysz filed a postconviction motion for resentencing, alleging she was sentenced on inaccurate information. The court held a hearing and then entered an order denying her motion. This no-merit appeal follows.

The no-merit report addresses potential issues of whether the circuit court properly exercised its discretion at sentencing, whether the sentence was unduly harsh or excessive, whether there is any information qualifying as a new factor that could serve as grounds for seeking sentence modification, and whether Czysz was sentenced on accurate information. This court is satisfied that the no-merit report properly analyzes the issues it raises as without arguable merit, and this court will not discuss them further.

Czysz filed a response to counsel's no-merit report. In her response, Czysz notes that she waived her final revocation hearing but now appears to want a revocation hearing to contest the allegations in the revocation summary. However, the revocation of Czysz's probation is not before this court. *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 underlying criminal action);

see also State ex rel. Johnson v. Cady, 50 Wis. 2d 540, 550, 185 N.W.2d 306 (1971) (explaining that judicial review of probation revocation is by petition for certiorari in circuit court). Our review is limited to the sentence Czysz received following her revocation. In any event, during her sentencing after the revocation hearing, Czysz, through counsel, advised the court that she disputed some of the allegations in the revocation summary but conceded “[e]nough of these violations are true to warrant revocation.” As stated above, based on our review of the record, we agree with counsel that there is no arguable merit to a claim that Czysz was sentenced on inaccurate information.

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the judgment of conviction and postconviction order, and discharges appellate counsel of the obligation to represent Czysz further in this appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney David Malkus is relieved of further representation of Carla M. Czysz in this appeal. *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