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DISTRICT II

April 19, 2023

To:

Hon. David P. Wilk
Circuit Court Judge
Electronic Notice

David Malkus
Electronic Notice

Rebecca Matoska-Mentink
Clerk of Circuit Court
Kenosha County Courthouse
Electronic Notice

Gillie Robinson, #687254
Marathon County Jail
500 Forest St.
Wausau, WI 54403

Winn S. Collins
Electronic Notice

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

2022AP297-CRNM	State of Wisconsin v. Gillie Robinson (L.C. #2019CF1157)
2022AP298-CRNM	State of Wisconsin v. Gillie Robinson (L.C. #2019CM1225)

Before Gundrum, P.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).

In these consolidated appeals, Gillie Robinson seeks review of judgments of conviction for misdemeanor battery contrary to WIS. STAT. § 940.19(1) and misdemeanor use of a telephone to make threatening phone calls contrary to WIS. STAT. § 947.012(1)(a), each subject to the repeater penalty enhancer under WIS. STAT. § 939.62(1)(a). Robinson's appointed appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v.*

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2021-22). All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

California, 386 U.S. 738 (1967). Robinson was notified of his right to file a response but has not done so. Upon consideration of the no-merit report and following an independent review of the appellate record as mandated by *Anders* and RULE 809.32, we conclude there is no arguable merit to any issue that could be raised on appeal and summarily affirm the judgments. *See* WIS. STAT. RULE 809.21(1).

Robinson was originally charged with numerous offenses and entered into a plea agreement under which he agreed to plead guilty to the aforementioned crimes. The State promised to recommend probation, and at sentencing the circuit court withheld sentence and imposed two years of concurrent probation on each offense.

Robinson was subsequently revoked from probation. The hearing for sentencing after revocation was adjourned at the request of Robinson's defense counsel. At the adjourned hearing, the State recommended consecutive sentences each consisting of one year of initial confinement and one year of extended supervision. The defense argued for jail sentences. The circuit court ultimately adopted the State's recommendation, but ordered that the sentences be served concurrently.

The appeals from the sentences following revocation 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. *See State ex rel. Flowers v. DHSS*, 81 Wis. 2d 376, 384, 260 N.W.2d 727 (1978) (holding 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) (holding judicial review of probation revocation is available by petition for certiorari in the circuit court). The only potential appellate

issues at this point in the proceedings relate to the circuit court's sentencing following revocation, which we would review for an erroneous exercise of discretion. *State v. Macemon*, 113 Wis. 2d 662, 667-68, 335 N.W.2d 402 (1983).

The no-merit report concludes there is no arguable merit to any of the following: (1) a claim that the circuit court failed to sufficiently explain its revocation sentences or that it erred when exercising its sentencing discretion; (2) a claim that the sentences were unduly harsh or excessive within the meaning of *Ocanas v. State*, 70 Wis. 2d 179, 233 N.W.2d 457 (1975); (3) a claim that the court relied on inaccurate information at sentencing; (4) a claim that a new factor currently exists that would provide grounds for seeking sentence modification; and (5) a claim that the court did not adequately address Robinson's eligibility for the Substance Abuse or Challenge Incarceration programs. Our review of the appellate record satisfies us that the no-merit report sufficiently analyzes these issues and properly concludes that any challenge based upon them would lack arguable merit. Our review of the appellate record discloses no other potentially meritorious issues for appeal.

Therefore,

IT IS ORDERED that the judgments of conviction are summarily affirmed. *See* WIS. STAT. RULE 809.21(1).

IT IS FURTHER ORDERED that Attorney David Malkus is relieved of further responsibility for representing Gillie Robinson in connection with these appeals.

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

Sheila T. Reiff
Clerk of Court of Appeals