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DISTRICT IV

August 3, 2023

To:

Hon. Martin J. De Vries
Circuit Court Judge
Electronic Notice

Kelly Enright
Clerk of Circuit Court
Dodge County Justice Facility
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Leonard D. Kachinsky
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Christopher R. Young 591314
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You are hereby notified that the Court has entered the following opinion and order:

2022AP88-CRNM State of Wisconsin v. Christopher R. Young (L.C. # 2019CF314)

Before Kloppenburg, P.J., Blanchard, 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).

Christopher Young appeals a circuit court judgment sentencing him to prison for burglary of a building or dwelling following the revocation of his probation. Attorney Len Kachinsky has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2021-22);¹ *Anders v. California*, 386 U.S. 738, 744 (1967); and *State ex rel. McCoy v. Wisconsin Ct. of Appeals, Dist. I*, 137 Wis. 2d 90, 403 N.W.2d 449 (1987), *aff'd*, 486 U.S. 429.

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

Young was sent a copy of the no-merit report, and both counsel and this court advised him of his right to file a response. Young has not responded. Upon reviewing the entire record, as well as the no-merit report, we conclude that there are no issues of arguable merit for appeal.

We first note that an appeal from a sentence following revocation does not bring an underlying conviction before this court. *State v. Drake*, 184 Wis. 2d 396, 399, 515 N.W.2d 923 (Ct. App. 1994). Nor can an appellant challenge the validity of any probation revocation decision in this proceeding. See *State ex rel. Flowers v. DHSS*, 81 Wis. 2d 376, 384, 260 N.W.2d 727 (1978) (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) (judicial review of probation revocation is by way of certiorari to the court of conviction). The only potential issue for appeal is the circuit court's imposition of sentence following revocation.

Our 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.” *State v. Krueger*, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). Here, the record shows that Young was afforded the opportunity to comment on the revocation materials and to address the circuit court prior to sentencing. The court considered the standard sentencing factors and explained their application to this case. See generally *State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. On the record, the court discussed the severity of the offense, Young's character, his history of violating the terms of his probation, and the need to protect the public from Young's behavior. The court concluded that this is a case in which prison is necessary to protect the public and to meet Young's need for rehabilitation.

The circuit court sentenced Young to three years of initial confinement and two years of extended supervision. The court denied eligibility for the challenge incarceration program (CIP) and substance abuse program (SAP) on the basis that Young needs time in confinement “to get him away from his situation.” The court awarded 193 days of sentence credit.

The sentence imposed was within the applicable penalty range. *See* WIS. STAT. §§ 943.10(1m)(a) (classifying burglary of a building or dwelling as a Class F felony); 939.50(3)(f) (providing maximum imprisonment term of 12 years and six months for Class F felonies). There is a presumption that a sentence “well within the limits of the maximum sentence” is not unduly harsh, and the sentence imposed here was not “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.” *State v. Grindemann*, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507.

Having reviewed the record and the no-merit report, we agree with counsel that there would be no arguable merit to challenging Young’s sentence imposed after revocation.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment. *See State v. Allen*, 2010 WI 89, ¶¶81-82, 328 Wis. 2d 1, 786 N.W.2d 124. 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 judgment sentencing Christopher Young after revocation is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Len Kachinsky is relieved of any further representation of Young in this matter. *See* WIS. STAT. RULE 809.32(3).

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

Samuel A. Christensen
Clerk of Court of Appeals