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DISTRICT II

October 11, 2023

To:

Hon. Eugene A. Gasiorkiewicz
Circuit Court Judge
Electronic Notice

Amy Vanderhoef
Clerk of Circuit Court
Racine County Courthouse
Electronic Notice

Patricia J. Hanson
Electronic Notice

Kelsey Jarecki Morin Loshaw
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Daniel J. Turner, #345185
Oakhill Correctional Inst.
P.O. Box 938
Oregon, WI 53575-0938

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

2021AP35-CRNM State of Wisconsin v. Daniel J. Turner (L.C. #2009CF1344)

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).

Daniel J. Turner appeals from a judgment sentencing him after revocation of his probation. Appellate counsel, Vicki Zick,¹ has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22)² and *Anders v. California*, 386 U.S. 738 (1967). Turner received a copy of the report, was advised of his right to file a response, and has responded. Appellate counsel

¹ Attorney Vicky Zick filed the no-merit report. Turner is now represented by Attorney Kelsey Jarecki Morin Loshaw.

² All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

then filed a supplemental no-merit report. Upon this court's independent review of the record as mandated by *Anders*, appellate counsel's reports, and Turner's response, we conclude that there is no arguable merit to any issue which could be raised on appeal. We therefore summarily affirm the judgment.

On February 21, 2012, Turner pled no contest to one count of theft by contractor. The circuit court withheld sentence and placed Turner on two years of probation to be served consecutive to a sentence he was serving in a different case. Turner began serving his term of probation in this case on April 10, 2017.

In February 2019, the Department of Corrections (DOC) revoked Turner's probation on the grounds that Turner committed multiple rule violations and two pending misdemeanor offenses. In September 2019, the circuit court held a sentencing after revocation hearing where it sentenced Turner to two years of initial confinement and two years of extended supervision.

In October 2019, the DOC notified the circuit court that the maximum term of imprisonment for Turner's conviction—a Class I felony—was three and one half years with a maximum confinement period of eighteen months. The circuit court reduced Turner's term of initial confinement to eighteen months and left Turner's extended supervision period unchanged. The circuit court amended the Judgment of Conviction to also reflect forty days of sentence credit.

After counsel filed the no-merit report underlying this appeal, Turner contacted appellate counsel and challenged the amount of sentence credit to which he felt entitled. Appellate counsel notified the circuit court. The circuit court again amended the Judgment of Conviction to reflect 210 days of sentence credit.

An appeal from a judgment imposing sentence after probation revocation 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) (probation revocation 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). This court’s review is therefore limited to whether the circuit court properly exercised its sentencing discretion.

Sentencing after probation revocation is reviewed “on a global basis, treating the latter sentencing as a continuum of the” original sentencing hearing. See *State v. Wegner*, 2000 WI App 231, ¶7, 239 Wis. 2d 96, 619 N.W.2d 289. Thus, at sentencing after probation revocation, we expect the circuit court will consider many of the same objectives and factors that it is expected to consider at the original sentencing hearing. See *id.*; and cf. *State v. Brown*, 2006 WI 131, ¶¶20-21, 298 Wis. 2d 37, 725 N.W.2d 262. Here, the circuit court did just that when it discussed Turner’s conduct, his character, and the need to protect the public from Turner’s behaviors.

Following a few corrections, the circuit court also imposed a sentence within the applicable penalty range. There is a presumption that a sentence “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.” See *State v. Grindemann*, 2002 WI App 106, ¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507 (quoting *State v. Daniels*, 117 Wis. 2d 9, 22, 343 N.W.2d 411 (Ct. App. 1983));

Ocanas v. State, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). Having reviewed the record and the no-merit report, we agree with appellate counsel that there would be no arguable merit to challenging Turner’s sentence imposed after revocation. Accordingly, we also reject the arguments Turner raises in his response regarding his sentence and his sentence credit.

Turner also raises multiple challenges to the DOC’s revocation decision. However, the issues in this appeal are limited to the events of his resentencing hearing and do not extend back to his revocation hearing. *State v. Scaccio*, 2000 WI App 265, ¶10, 240 Wis. 2d 95, 622 N.W.2d 449. We will not address these issues further.

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 after revocation of probation is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Kelsey Jarecki Morin Loshaw is relieved of any further representation of Daniel J. Turner 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