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DISTRICT III

March 5, 2024

To:

Hon. Tammy Jo Hock
Circuit Court Judge
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

John VanderLeest
Clerk of Circuit Court
Brown County Courthouse
Electronic Notice

Jesse D. Kaufmann 609380
Stanley Correctional Inst.
100 Corrections Dr.
Stanley, WI 54768

Susan E. Alesia
Electronic Notice

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

2022AP1788-CRNM State of Wisconsin v. Jesse D. Kaufmann
(L. C. No. 2012CF1088)

Before Stark, 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).

Jesse D. Kaufmann appeals a judgment imposing sentence after the revocation of his probation. Attorney Susan E. Alesia has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32; *Anders v. California*, 386 U.S. 738, 744 (1967). Kaufmann was sent a copy of the no-merit report, and he filed a one-page response.

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

Upon reviewing the entire record, as well as the no-merit report and response, this court concludes that there are no arguably meritorious appellate issues.

In 2013, Kaufmann entered no-contest pleas to disorderly conduct and substantial battery, as domestic abuse offenses, and to misdemeanor bail jumping, all as repeaters. On the substantial battery count, the circuit court imposed a bifurcated sentence consisting of three and one-half years of initial confinement followed by two years of extended supervision. On the disorderly conduct and bail jumping counts, the court withheld sentence and imposed concurrent three-year terms of probation, to run consecutively to the sentence on the substantial battery count.

In December 2021, Kaufmann's probation was revoked. He returned to the circuit court for sentencing after revocation on the disorderly conduct and bail jumping counts. The court sentenced Kaufmann to one year of initial confinement followed by one year of extended supervision on each count, to be served consecutively. The court found Kaufmann ineligible for the Challenge Incarceration Program and the Substance Abuse Program and it awarded him 193 days of presentence credit pursuant to WIS. STAT. § 973.155. This no-merit appeal follows.

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). The only potential issue for appeal is the circuit court's imposition of sentence following revocation.

We agree with appellate counsel's analysis and conclusion that there is no merit to any issue challenging the sentences imposed after revocation. The record shows that Kaufmann 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. Regarding the nature of the offenses, the court stated that the conduct for which Kaufmann was convicted was violent and occurred over the course of multiple days. With respect to Kaufmann's character, the court discussed his lengthy criminal record and history of poor decision-making. The court also noted that Kaufmann had a history of noncompliance with the terms of his probation and it concluded that a prison term was necessary to protect the public.

The circuit court's sentences were demonstrably proper exercises of discretion with which we will not interfere. *See Gallion*, 270 Wis. 2d 535, ¶¶17-18. The sentences imposed were within the applicable penalty ranges. Therefore, it cannot reasonably be argued that the sentences were so excessive or unusual as to shock public sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

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.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Susan E. Alesia is relieved of any further representation of Jesse D. Kaufmann in this matter pursuant to 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