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DISTRICT IV

March 14, 2024

To:

Hon. Ann M. Peacock
Circuit Court Judge
Electronic Notice

Jeff Okazaki
Clerk of Circuit Court
Dane County Courthouse
Electronic Notice

Kelsey Jarecki Morin Loshaw
Electronic Notice

Tracy L. McMiller
Electronic Notice

William J. Buffo
113 State Street
Mazomanie, WI 53560

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

2023AP1007-CRNM	State of Wisconsin v. William J. Buffo (L.C. # 2020CF2667)
2023AP1008-CRNM	State of Wisconsin v. William J. Buffo (L.C. # 2020CM2222)

Before Nashold, 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).

Attorney Kelsey Loshaw, appointed counsel for William Buffo, has filed a no-merit report seeking to withdraw as appellate counsel pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Buffo was sent a copy of the report and has not filed a

¹ These consolidated appeals are 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.

These appeals were consolidated for briefing and disposition by an order dated July 25, 2023, pursuant to WIS. STAT. RULE 809.10(3).

response. This court ordered further input from appellate counsel on one potential issue, and counsel filed a supplemental no-merit report. Upon consideration of the report, the supplemental report, and an independent review of the record, I conclude that there is no arguable merit to any issue that could be raised on appeal. Accordingly, I affirm.

Buffo was convicted of one count of criminal damage to property, two counts of knowingly violating a domestic abuse injunction, and one count of unlawful use of a computer. The circuit court initially withheld sentence and ordered concurrent probation terms of two years and three years. Buffo's probation was later revoked, and he was returned to court for sentencing after revocation. The court imposed consecutive jail sentences of six months on each of the charges, except that the court imposed ninety days of consecutive jail time on the unlawful use of a computer charge.

An appeal from a revocation sentence does not bring the underlying conviction before this court. *See State v. Drake*, 184 Wis. 2d 396, 399, 515 N.W.2d 923 (Ct. App. 1994). The validity of the probation revocation is also not before the court here. *See State ex rel. Flowers v. DHSS*, 81 Wis. 2d 376, 384, 260 N.W.2d 727 (1978) (probation revocation is independent of underlying criminal action); *see also State ex rel. Johnson v. Cady*, 50 Wis. 2d 540, 550, 185 N.W.2d 306 (1971) (review of probation revocation is by petition for certiorari in circuit court). Thus, the only potential issues at this point are those relating to Buffo's revocation sentences.

The circuit court's duty at a sentencing after revocation is the same as its duty at the original sentencing. *State v. Wegner*, 2000 WI App 231, ¶7 n.1, 239 Wis. 2d 96, 619 N.W.2d 289. The no-merit report addresses whether the court erred in exercising its sentencing discretion in imposing the revocation sentences. I agree with counsel that there is no arguable

merit to this issue. The court considered the required sentencing factors along with other relevant factors, and the court did not rely on any inappropriate factors. *See State v. Gallion*, 2004 WI 42, ¶¶37-49, 270 Wis. 2d 535, 678 N.W.2d 197. Buffo's sentences were each within or equal to the maximum allowed, and he could not challenge the sentences as unduly harsh or so excessive as to shock public sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). Further, as discussed in the no-merit report, there is no other apparent basis on which Buffo might challenge his sentences.

The potential issue that counsel has addressed in the supplemental no-merit report in response to this court's request for further input is whether Buffo knowingly and voluntarily waived his right to counsel for the sentencing after revocation hearing. Buffo appeared without counsel at the hearing, and there was no discussion on the record of Buffo's right to counsel on the day of the hearing. It was initially unclear to this court whether the circuit court had previously conducted a colloquy with Buffo regarding his right to counsel and whether he had validly waived that right. However, the record has now been supplemented with a transcript from a hearing held several days before sentencing, and that transcript shows that the circuit court conducted a colloquy with Buffo and that Buffo validly waived his right to counsel for the sentencing hearing. Based on the record as now supplemented, I agree with appellate counsel's conclusion that it would be frivolous to argue that Buffo did not knowingly and voluntarily waive his right to counsel for the sentencing hearing.

Therefore,

IT IS ORDERED that the judgments are summarily affirmed. *See WIS. STAT. RULE 809.21.*

IT IS FURTHER ORDERED that Attorney Kelsey Loshaw is relieved of any further representation of William Buffo 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