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DISTRICT III

July 23, 2024

To:

Hon. Mark G. Schroeder
Circuit Court Judge
Electronic Notice

Barb Bocik
Clerk of Circuit Court
Outagamie County Courthouse
Electronic Notice

Kirk D. Henley
Electronic Notice

Charles M. Stertz
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Lamar M. Campbell 509981
Oshkosh Correctional Inst.
P.O. Box 3310
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You are hereby notified that the Court has entered the following opinion and order:

2022AP1984-CRNM State of Wisconsin v. Lamar M. Campbell (L. C. No. 2016CF71)

Before Stark, P.J., Hruz and Gill, 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).

Attorney Kirk D. Henley has filed a no-merit report seeking to withdraw as appellate counsel for appellant Lamar M. Campbell. *See* WIS. STAT. RULE 809.32 (2019-20);¹ *Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit report addresses whether there would be arguable merit to any issues arising from the sentence imposed by the circuit court following the revocation of Campbell's probation. Campbell was sent a copy of the report, but he has not filed

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

a response. Upon our independent review of the no-merit report and the record, we agree with counsel's assessment that there are no arguably meritorious appellate issues. We summarily affirm. *See* WIS. STAT. RULE 809.21.

In July 2016, Campbell was convicted of one count of burglary. The circuit court withheld sentence and placed Campbell on three years of probation, consecutive to a sentence Campbell was then serving. In April 2022, Campbell returned to court for sentencing after his probation was revoked. The court sentenced Campbell to three years of initial confinement followed by five years of extended supervision. The court awarded Campbell 154 days of sentence credit based on a stipulation between the prosecutor and defense counsel.

This appeal from the sentence imposed following revocation of probation 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 before us in 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). The only potential appellate issues at this point in the proceedings relate to sentencing following revocation.

This court's 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 complained of.”² *State v. Krueger*, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). Here, the circuit court explained that it considered facts pertinent to the standard sentencing factors and objectives, including Campbell’s rehabilitative needs, the need to protect the public, and the gravity of the offense. *See State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. The sentence imposed was within the maximum permitted for Campbell’s burglary conviction, and given the facts of this case, there would be no arguable merit to a claim that the sentence was unduly harsh or excessive. *See State v. Stenzel*, 2004 WI App 181, ¶21, 276 Wis. 2d 224, 688 N.W.2d 20 (a sentence is unduly harsh or excessive “only where the sentence is 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” (citation omitted)). We agree with counsel’s assessment that further proceedings related to the sentence imposed after revocation would be wholly frivolous.

Counsel also concludes that there would be no arguable merit to a claim that Campbell’s trial counsel was ineffective at the sentencing after revocation hearing. We agree with counsel’s assessment that a claim of ineffective assistance of counsel would be wholly frivolous.

Upon our independent review of the record, we conclude that there is no other arguable basis for reversing the judgment and that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

² A circuit court’s duty at sentencing after revocation is the same as its duty at an original sentencing. *See State v. Wegner*, 2000 WI App 231, ¶7 n.1, 239 Wis. 2d 96, 619 N.W.2d 289.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Kirk D. Henley is relieved of any further representation of Lamar M. Campbell 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