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DISTRICT II

September 4, 2024

To:

Hon. John A. Jorgensen
Circuit Court Judge
Electronic Notice

Tara Berry
Clerk of Circuit Court
Winnebago County Courthouse
Electronic Notice

Erica L. Bauer
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

John R. Sammer #596041
Green Bay Correctional Inst.
P.O. Box 19033
Green Bay, WI 54307-9033

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

2023AP2036-CRNM State of Wisconsin v. John R. Sammer (L.C. #2021CF90)

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).

John R. Sammer appeals from a judgment of the circuit court sentencing him to prison following the revocation of his probation on his conviction of second-degree recklessly endangering safety, as a repeater. Attorney Erica L. Bauer 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 Court of Appeals*, 137 Wis. 2d

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

90, 403 N.W.2d 449 (1987), *aff'd*, 486 U.S. 429. Sammer was sent a copy of the report, and both counsel and this court advised him of his right to file a response. Sammer has not responded. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. Upon reviewing the entire record, as well as the no-merit report, we conclude that there are no arguably meritorious appellate issues.

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). As the no-merit report properly observes, 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 trial 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 Sammer was afforded the opportunity to comment on the revocation materials and to address the court prior to sentencing, which he did. The circuit 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 severity of the offense, the court noted that Sammer brandished a knife, caused harm to a

victim, and used the knife on an automobile. The court observed the violent nature of the offense and found that Sammer lost control of his own behavior when committing the offense. With respect to the defendant's character and rehabilitative needs, the court observed that Sammer has significant mental health treatment needs and has repeatedly shown that supervision in the community is not an effective means of ensuring that Sammer receives the help he requires. The court further concluded that a prison term was necessary to protect the public, particularly in light of Sammer's history of violent conduct toward others.

The circuit court then sentenced Sammer to one and one-half years of initial confinement and three years of extended supervision. It also imposed standard costs and conditions of supervision, found Sammer ineligible for the Challenge Incarceration and Earned Release Programs, established conditions of supervision, and awarded 145 days of sentence credit.

The sentence the circuit court imposed is within the applicable penalty range, and constituted less than one-third of the maximum exposure of fourteen years Sammer faced. *See* WIS. STAT. §§ 941.30(2) (classifying second-degree recklessly endangering safety as a Class G felony); 939.50(3)(g) (providing maximum imprisonment term of ten years for Class G felonies); 939.62(1)(b) and (2) (providing maximum sentence may be increased by four years if defendant was convicted of a felony within five years of current offense); and 973.01 (explaining bifurcated sentence structure). There is a presumption that a sentence “well within the limits of the maximum sentence” is not unduly harsh, and the sentence totaling four and one-half years of imprisonment imposed here is 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.

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 of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Erica L. Bauer is relieved of any further representation of Sammer 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