



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT IV

December 5, 2024

To:

Hon. Chris Taylor
Circuit Court Judge
Electronic Notice

Jeff Okazaki
Clerk of Circuit Court
Dane County Courthouse
Electronic Notice

Gregory Bates
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

John E. Endres
615 E. Washington Ave.
Madison, WI 53703

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

2023AP2087-CRNM State of Wisconsin v. John E. Endres (L.C. # 2018CF1195)

Before Blanchard, Graham, and Nashold, 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 Gregory Bates, appointed counsel for John Endres, has filed a no-merit report seeking to withdraw as appellate counsel pursuant to WIS. STAT. RULE 809.32 (2021-22)¹ and *Anders v. California*, 386 U.S. 738 (1967). Endres was sent a copy of the report and has not filed a response. Upon consideration of the report and an independent review of the record, we conclude that there is no arguable merit to any issue that could be raised on appeal. Accordingly, we affirm.

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

Endres was convicted of one count of stalking after a jury trial. The circuit court withheld sentence and ordered three years of probation. Endres's probation was later revoked, and he was returned to court for sentencing after revocation.

Prior to sentencing, the issue of Endres's competency to proceed was raised. The circuit court found that he was competent. Endres subsequently waived his right to counsel for the sentencing proceedings. The court sentenced him to the maximum prison term, consisting of one year and six months of initial confinement and two years of extended supervision.

An appeal after a revocation sentence 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). The validity of the probation revocation is also not before us. 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 Endres's revocation sentence.

We first address whether Endres could challenge his sentence on the ground that he was not competent to proceed. We conclude that there is no arguable merit to this issue. A circuit court's competency finding will not be overturned unless clearly erroneous, see *State v. Byrge*, 2000 WI 101, ¶45, 237 Wis. 2d 197, 614 N.W.2d 477, and the court's finding here is supported by an expert report. It would be frivolous for Endres to argue that the finding is clearly erroneous.

Next, we address whether Endres could argue that his waiver of the right to counsel was invalid. We conclude that there is no arguable merit to this issue. Consistent with the

requirements of *State v. Klessig*, 211 Wis. 2d 194, 206-07, 564 N.W.2d 716 (1997), the circuit court conducted a colloquy with Endres regarding his right to counsel. The court concluded that Endres was waiving the right to counsel knowingly and voluntarily, and the record supports this conclusion.²

Finally, we address whether the circuit court erroneously exercised its sentencing discretion. We conclude that there is no arguable merit to this issue. The circuit court's duty at 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. Here, 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. The court provided a rational explanation for imposing the maximum sentence, referencing among other factors Endres's ongoing pattern of engaging in harassing conduct and his failure to take advantage of treatment options in the community. Endres could not challenge the sentence 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). We see no other basis on which he might challenge the court's exercise of its sentencing discretion.

Therefore,

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

² The circuit court also made an express finding that Endres was competent to represent himself, and this finding is likewise supported by the record.

IT IS FURTHER ORDERED that Attorney Gregory Bates is relieved of any further representation of John Endres 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