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

2012AP1697-CRNM State of Wisconsin v. Timothy Coleman (L.C. #2006CF1449)

Before Brown, C.J., Reilly and Gundrum, JJ.

Timothy Coleman appeals from a judgment imposing sentence after the revocation of his probation. Coleman's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2011-12),¹ and *Anders v. California*, 386 U.S. 738 (1967). Coleman received a copy of the report and has filed a response. Upon consideration of the report, Coleman's response, and an independent review of the record, we conclude that the judgment may be summarily affirmed

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

In 2007, following a conviction for one count of robbery by threat of force as a repeater, the trial court withheld sentence and ordered a six-year term of probation. On October 4, 2011, following the revocation of his probation, Coleman appeared for sentencing. The trial court imposed a five-year bifurcated sentence, with two years of initial confinement and three years of extended supervision. The court awarded 193 days of sentence credit pursuant to WIS. STAT. § 973.155.

Coleman, by counsel, filed a postconviction motion seeking additional sentence credit and, at the postconviction hearing, Coleman asserted that he was entitled to twenty-nine days of additional credit. The State argued that Coleman was only entitled to eight additional days of credit. In the end, the court awarded an additional thirty-one days of credit and added this to the 193 days previously ordered. The court entered an amended judgment of conviction reflecting a total sentence credit award of 224 days under WIS. STAT. § 973.155.²

Appellate counsel's no-merit report addresses whether the trial court properly exercised its discretion at the sentencing hearing after revocation and whether it properly determined that Coleman was entitled to 224 days of sentence credit toward his robbery sentence. Coleman has filed a response challenging only the sentence credit determination. Coleman contends that he is

² The 224 days of credit accounts for the following custodial periods: (1) September 30, 2008, through October 9, 2008; (2) October 3, 2010, through December 23, 2010; and (3) May 25, 2011, through October 4, 2011.

entitled to 198 additional days of sentence credit for time spent in custody prior to his original 2007 plea and sentencing.

With regard to the court's sentence, because this matter is before us following sentencing after probation revocation, Coleman's underlying conviction is not before us. *See State v. Drake*, 184 Wis. 2d 396, 399, 515 N.W.2d 923 (Ct. App. 1994). In addition, Coleman cannot challenge the probation revocation decision. *See State ex rel. Flowers v. DHSS Dept.*, 81 Wis. 2d 376, 384, 260 N.W.2d 727 (1978). Our review is limited to the trial court's sentencing discretion.

Sentencing after probation revocation is reviewed "on a global basis, treating the latter sentencing as a continuum of the" original sentencing hearing. *See State v. Wegner*, 2000 WI App 231, ¶7, 239 Wis. 2d 96, 619 N.W.2d 289. The court should consider many of the same objectives and factors it is expected to consider at the original sentencing hearing. *See id.* Where, as here, different judges presided over the original sentencing and the sentencing after revocation hearings, the new judge should familiarize himself or herself with the entire record. *See State v. Walker*, 2008 WI 34, ¶3, 308 Wis. 2d 666, 747 N.W.2d 673; *State v. Reynolds*, 2002 WI App 15, ¶9, 249 Wis. 2d 798, 643 N.W.2d 165.

We agree with appellate counsel's analysis and conclusion that there is no merit to any issue challenging the sentence imposed after revocation. The judge presiding over the sentencing after revocation indicated he had reviewed the criminal complaint, preliminary hearing transcript, both the defense and department of corrections presentence reports, and the revocation materials. The court properly familiarized itself with the particulars of Coleman's case.

Additionally, the record reveals that the trial court's sentence had a rational and explainable basis and was a proper exercise of discretion. *See State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197. In imposing its sentence, the court considered the seriousness of the offense, Coleman's character, and the need to protect the public. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Including the habitual offender enhancer, Coleman faced a maximum bifurcated sentence of twenty-one years, comprised of sixteen years of initial confinement and five years of extended supervision. *See* WIS. STAT. §§ 943.32(1)(b), 939.50(3)(e), and 939.62(1)(c). Under the circumstances of the case, the five-year sentence imposed does not "shock public sentiment and violate the judgment of reasonable people concerning what is right and proper." *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

We also agree with appellate counsel's assessment that Coleman is not entitled to additional sentence credit. Coleman suggests that he should receive an additional 198 days of credit to account for the period from June 21, 2006, the date he was placed in custody in connection with this and several unrelated cases, through January 5, 2007, the date of sentencing on those unrelated cases.³ Based on our review of the record, we conclude that Coleman is not entitled to receive that additional credit toward this case because it was already credited to the sentences ordered in Nos. 2005CF2251, 2006CF179, and 2006CF393. *See State v. Boettcher*, 144 Wis. 2d 86, 87, 423 N.W.2d 533 (1988) ("Credit is to be given on a day-for-day basis, which

³ The unrelated cases are Dane county circuit court case Nos. 2005CF2251, 2006CF179, and 2006CF393. On January 5, 2007, following the revocation of Coleman's probation in those cases, the court ordered concurrent four-year prison sentences with credit for the time spent in custody from June 21, 2006, through sentencing.

is not to be duplicatively credited to more than one of the sentences imposed to run consecutively” because this would amount to dual credit.).

At Coleman’s original sentencing hearing in this case on January 11, 2007, the court and parties acknowledged that Coleman was not entitled to sentence credit for time spent in custody from his arrest through the time of sentencing because those days had already been credited toward the prison cases mentioned above. Similarly, at the sentencing after revocation hearing in this case, the State informed the court that it believed that any time spent in custody in 2006-07 “was applied elsewhere.” Finally, postconviction counsel’s sentence credit motion concedes that the 198-day custodial period Coleman now complains of was credited and applied to the earlier prison sentences imposed on January 5, 2007, and the State and court agreed with this assessment at the postconviction hearing. Throughout the postconviction sentence credit proceedings, it was undisputed that Coleman was not entitled to receive credit in the present case for the 198 days spent in custody from June 21, 2006, through January 5, 2007.⁴

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the judgment, and discharges appellate counsel of the obligation to represent Coleman further in this appeal.

Upon the foregoing reasons,

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

⁴ Coleman is also not entitled to credit for the time spent in custody between January 5, 2007, the sentencing date of the unrelated cases, and January 11, 2007, the date he was placed on probation in the present case. Again, this would constitute impermissible dual credit.

IT IS FURTHER ORDERED that Attorney William E. Schmaal is relieved of further representation of Timothy Coleman in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals