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DISTRICT II

March 27, 2013

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

2012AP2112-CRNM State of Wisconsin v. Robert J. Buechel (L.C. #2009CF830)

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

Robert J. Buechel appeals from a judgment imposing a sentence after the revocation of probation. His 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). Buechel was provided a copy of the no-merit report and advised of the opportunity to file a response. He has not filed a response.

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

Based on the no-merit report and our independent review of the record, we affirm the judgment because there is no arguable merit to any issue that can be raised on appeal.

In 2010, Buechel was convicted of second-degree recklessly endangering safety and placed on probation for three years. His probation was revoked in March 2012. He was subsequently sentenced to five years' initial confinement and three years' extended supervision, with sentence credit for 487 days.

This appeal brings before the court only the sentence imposed after revocation.² The only possible issue for appeal is whether the sentence was an erroneous exercise of discretion or excessive.

We agree with the no-merit analysis that the sentencing court properly exercised its discretion. The court considered the seriousness of the offense and Buechel's personal circumstances, including his prior record and conduct while on probation. It determined that a period of incarceration and supervision was necessary to protect the public and not unduly depreciate the severity of the offense. This demonstrates consideration of appropriate factors and sentencing objectives. See *State v. Gallion*, 2004 WI 42, ¶¶40, 41, 270 Wis.2d 535, 678 N.W.2d 197. The sentence is well within the maximum and cannot be deemed excessive. See *State v. Daniels*, 117 Wis. 2d 9, 22, 343 N.W.2d 411 (Ct. App. 1983).

² An appeal from sentencing after revocation is limited to issues raised by the events of the resentencing hearing and the judgment entered as a result of that sentencing hearing. *State v. Scaccio*, 2000 WI App 265, ¶10, 240 Wis. 2d 95, 622 N.W.2d 449. An appeal taken from sentencing after revocation does not bring the original judgment of conviction before this court. *Id.*

We note that it is probable that the sentencing court did not read the transcript of the original sentencing hearing.³ See *State v. Reynolds*, 2002 WI App 15, ¶9, 249 Wis. 2d 798, 643 N.W.2d 165 (2001) (when the sentencing after revocation judge differs from the original sentencing judge, it is important for the second sentencing judge to be aware of the comments made at the original sentencing). *Reynolds* does not establish a bright-line rule that the original sentencing must be considered. *State v. Walker*, 2008 WI 34, ¶26, 308 Wis. 2d 666, 747 N.W.2d 673. This is not a case like *Reynolds* where the assessment of the severity of the crime was based on the original sentencing judge's view of the evidence presented at trial. See *id.*, 249 Wis. 2d 798, ¶14. Here the sentencing after revocation judge acknowledged that the original sentencing court attempted to address Buechel's rehabilitative needs through probation. Both sentencing judges had a compatible view of the seriousness of the offense and Buechel's prior record. Moreover, this is a case where the probation conduct cast Buechel in a different light and reliance on the original sentencing remarks was not necessary. See *id.*, ¶13. There is no arguable merit to a claim that the sentencing court erroneously exercised its discretion by not reviewing the remarks of the original sentencing judge.

No arguable issues exist for appeal. Accordingly we accept the no-merit report, affirm the judgment imposing sentencing after revocation, and discharge Attorney Randall Paulson from further representing Buechel in this matter.

³ Judge William Carver presided at the original sentencing and Judge Barbara H. Key sentenced Buechel after the revocation of probation. The transcript of the original sentencing hearing was not prepared and filed until June 14, 2012, months after the April 16, 2012 sentencing after revocation hearing. Because there is no merit to the related claim, it is not necessary to resolve whether in fact the second sentencing judge read the transcript.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Randall E. Paulson is relieved from further representing Robert J. Buechel in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals