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DISTRICT III

April 2, 2013

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

2013AP259-CRNM State of Wisconsin v. Kyle J. Ross (L.C. # 2011CF504)

Before Hoover, P.J., Mangerson, J., and Thomas Cane, Reserve Judge.

Counsel for Kyle Ross has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2011-12),¹ concluding there is no basis for challenging the sentence imposed after revocation of Ross's probation. Ross was informed of his right to respond to the report and has not responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738

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

(1967), we conclude there is no arguable merit to any issue that could be raised on appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

In March 2012, Ross pleaded no contest to physical abuse of a child, disorderly conduct and party to the crime of criminal damage to property. The circuit court withheld sentence and imposed concurrent three-year probation terms. Ross's probation was later revoked and the court imposed concurrent and consecutive sentences totaling six years and nine months, consisting of three years and nine months' initial confinement followed by three years' extended supervision.

Neither the underlying conviction nor the revocation are the subject of this appeal. *See State v. Drake*, 184 Wis. 2d 396, 399, 515 N.W.2d 923 (Ct. App. 1994). This court's review is therefore limited to whether the circuit court properly exercised its sentencing discretion.

There is no arguable merit to a claim that the circuit court improperly exercised its sentencing discretion. Before imposing a sentence authorized by law, the court considered the seriousness of the offenses; Ross's character, including his criminal history; the need to protect the public; and the mitigating circumstances Ross raised. *See State v. Gallion*, 2004 WI 42, 270 Wis. 2d 535, 678 N.W.2d 197. Under these circumstances, it cannot reasonably be argued that Ross's sentence is so excessive as to shock public sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Our independent review of the record discloses no other potential issues for appeal.

Therefore,

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

IT IS FURTHER ORDERED that attorney John C. Bachman is relieved of further representing Ross in this matter. *See* WIS. STAT. RULE 809.32(3).

*Diane M. Fremgen
Clerk of Court of Appeals*