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DISTRICT II

March 16, 2016

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

2015AP2662-CRNM State of Wisconsin v. Nathaniel A. McCranie (L.C. #2013CF166)

Before Neubauer, C.J., Reilly, P.J., and Hagedorn, J.

Nathaniel A. McCranie appeals from a judgment sentencing him after revocation of his probation. His appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2013-14)[1] and ***Anders v. California***, 386 U.S. 738 (1967). McCranie was advised of his right to file a response but has elected not to. Upon consideration of the report and our independent review of the record as required by ***Anders*** and RULE 809.32, we conclude there is no arguable merit to any issue that could be raised on appeal and that this appeal may be disposed of

[1] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

summarily. *See* WIS. STAT. RULE 809.21. We affirm the judgment, accept the no-merit report, and relieve Attorney Sara Kelton Brelie of further representing McCranie in this matter.

In 2013, McCranie pled no contest to fleeing and eluding an officer, a felony, and misdemeanor bail jumping, both as a repeater. The court withheld sentence and ordered three years' probation. When his probation was revoked in 2013, the court sentenced him to eighteen months' confinement in prison followed by two years' extended supervision on the felony and a concurrent nine months on the misdemeanor.[2] This no-merit appeal followed.

When probation is revoked, there can be no challenge to the underlying conviction; appellate review is limited to the sentencing after revocation. *See* ***State v. Drake***, 184 Wis. 2d 396, 399, 515 N.W.2d 923 (Ct. App. 1994). The report thus properly examines whether the trial court erroneously exercised its discretion in sentencing McCranie after his probation was revoked. We agree that it did not.

Sentencing is left to the discretion of the circuit court; on review an appellate court determines only if the court erroneously exercised its discretion. ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. A proper exercise of discretion requires a sentencing court to provide on the record a "rational and explainable basis" for the sentence imposed in light of the sentencing objectives. *See* ***id.***, ¶¶39-40 & n.9. The court must consider the gravity of the offense, the character of the defendant, and the need for protection of the public, and may consider other relevant factors. ***State v. Harris***, 75 Wis. 2d 513, 519, 250 N.W.2d 7 (1977). We

[2] The Written Explanation of Determinate Sentence, which breaks down a defendant's sentence in years and months, misstates McCranie's initial term of prison confinement. It reads "1 year and 8 months," instead of either "1 year and 6 months" or "18 months." As the judgment of conviction accurately reflects the sentence the trial court imposed, we deem it an inconsequential scrivener's error.

review sentencing after revocation under this same standard. ***State v. Reynolds***, 2002 WI App 15, ¶8, 249 Wis. 2d 798, 643 N.W.2d 165 (2001). When a proper exercise of discretion has been demonstrated, this court has a strong policy against interference with that discretion and we presume the sentencing court acted reasonably. ***Gallion***, 270 Wis. 2d 535, ¶18.

The court acknowledged that McCranie's offense was not the most serious it had seen and that he appeared to have good intentions. Offsetting that was his extensive record of violations of the rules of probation, making a prison sentence necessary. The court explained that the sentence was not for punishment as much as to provide a mechanism to ensure that McCranie follows through with an AODA treatment program. McCranie was sentenced on accurate information. *See* ***State v. Tiepelman***, 2006 WI 66, ¶2, 291 Wis. 2d 179, 717 N.W.2d 1. No arguable claim could be made that the court improperly exercised its sentencing discretion.

Likewise, no arguable claim could be made that the sentences are "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." ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). As a repeat offender, McCranie faced up to seven and one-half years' imprisonment and $20,000 in fines. A sentence that is well within the limits of the maximum available does not violate the judgment of reasonable people. *See* ***State v. Daniels***, 117 Wis. 2d 9, 22, 343 N.W.2d 411 (Ct. App. 1983).

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

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Sara Kelton Brelie is relieved of further representing McCranie in this matter.

Diane M. Fremgen
Clerk of Court of Appeals