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DISTRICT III

April 19, 2016

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

2014AP959-CRNM	State of Wisconsin v. Jacob G. Larson
2014AP960-CRNM	(L. C. ##2012CM243; 2011CF160; 2011CF161)
2014AP961-CRNM	

Before Stark, P.J., Hruz and Seidl, JJ.

Counsel for Jacob Larson has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2013-14),¹ concluding there is no basis for challenging the sentences imposed after revocation of Larson's probation. Larson 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 (1967), we conclude there is no arguable merit to any issue that could be raised on

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

appeal. Therefore, we summarily affirm the judgments of conviction. *See* WIS. STAT. RULE 809.21.

In Oneida County Circuit Court case No. 2011CF160, the State charged Larson with two counts of felony burglary, two counts of misdemeanor theft, and two counts of misdemeanor bail jumping. In Oneida County Circuit Court case No. 2011CF161, the State charged Larson with two counts of misdemeanor retail theft, three counts of misdemeanor bail jumping, and one count each of felony burglary, receiving stolen property, and misdemeanor theft. On September 28, 2011, Larson entered into a global plea agreement that included these two cases. Larson pleaded no contest to two counts of felony burglary, three counts of misdemeanor theft, two counts of misdemeanor retail theft, and one count of receiving stolen property. The remaining counts from both cases were dismissed and read in. The circuit court deferred entry of judgment on the two burglary counts. With respect to the remaining six misdemeanors, the court withheld sentence and placed Larson on three years' probation.

In June 2012, the State charged Larson with misdemeanor retail theft in Oneida County Circuit Court case No. 2012CM243 and, in September 2012, Larson pleaded guilty to that offense. The court then entered judgment on the burglary arising from case No. 2011CF160, thereby revoking the deferral that was previously ordered.² The court again withheld sentence and placed Larson on two years' probation for the burglary in case No. 2011CF160, and one year of probation for the theft in case No. 2012CM243. All of Larson's probation terms were

² Because the court continued the deferral of the entry of judgment for the burglary in case No. 2011CF161, this court questioned whether Larson could appeal as of right in that case because the pending burglary count arguably rendered the judgment on the other counts nonfinal. We consequently granted leave to appeal in that case.

ultimately revoked in September 2013 and, out of a maximum possible sentence of seventeen years and nine months, the court imposed concurrent sentences consisting of one and one-half years' initial confinement and three and one-half years' extended supervision. Consistent with the parties' stipulation, the court awarded 220 days of sentence credit toward the sentences in case Nos. 2011CF160 and 2011CF161, and 156 days of sentence credit toward the sentence in case No. 2012CF243.

An appeal from a judgment imposing sentence after probation revocation 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). Additionally, the validity of the probation revocation itself is not the subject of this appeal. *See State ex rel. Flowers v. DHSS*, 81 Wis. 2d 376, 384, 260 N.W.2d 727 (1978) (probation revocation independent from underlying criminal action); *see also State ex rel. Johnson v. Cady*, 50 Wis. 2d 540, 550, 185 N.W.2d 306 (1971) (judicial review of probation revocation is by petition for certiorari in circuit court). Because Larson did not timely appeal the underlying convictions in these cases, this court's review is limited to whether the circuit court properly exercised its discretion when imposing a sentence after revocation of Larson's probation.

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; Larson's character, including his criminal history; the need to protect the public; and the mitigating circumstances Larson raised. *See State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. Under these circumstances, it cannot reasonably be

argued that Larson'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 judgments are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Steven D. Phillips is relieved of further representing Larson in these matters. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals