



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

August 10, 2016

To:

Hon. L. Edward Stengel
Circuit Court Judge
Sheboygan County Courthouse
615 N. 6th Street
Sheboygan, WI 53081

Melody Lorge
Clerk of Circuit Court
Sheboygan County Courthouse
615 N. 6th Street
Sheboygan, WI 53081

Joseph R. DeCecco
District Attorney
615 N. 6th St.
Sheboygan, WI 53081

Hannah Schieber Jurss
State Public Defender
P.O. Box 7862
Madison, WI 53707-7862

Gregory M. Weber
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Michael T. Sullivan 559272
Oshkosh Corr. Inst.
P.O. Box 3310
Oshkosh, WI 54903-3310

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

2015AP1825-CRNM State of Wisconsin v. Michael T. Sullivan (L.C. #2004CF489)

Before Reilly, P.J., Gundrum and Hagedorn, JJ.

Michael Sullivan appeals from a judgment sentencing him after revocation of his probation. Sullivan was convicted of manufacturing/delivering tetrahydrocannabinols contrary to WIS. STAT. § 961.41(1)(h)3. (2013-14)¹ and maintaining a drug trafficking place contrary to WIS. STAT. § 961.42(1). Sullivan's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Sullivan received a copy of

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

the report and was advised of his right to file a response. He has not done so. Upon consideration of the report and an independent review of the record as mandated by *Anders* and RULE 809.32, we summarily affirm the judgment because there are no issues that would have arguable merit for appeal. WIS. STAT. RULE 809.21.

The no-merit report addresses whether the circuit court misused its sentencing discretion. We agree with appellate counsel that this issue does not have arguable merit for appeal.

With regard to the sentences, the record reveals that the sentencing court's discretionary decision had a "rational and explainable basis." *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197. The court adequately discussed the facts and factors relevant to sentencing Sullivan to a seven-year term for manufacturing/delivering tetrahydrocannabinols and a concurrent three and one-half year term for maintaining a drug trafficking place. In fashioning the sentences, the court considered the seriousness of the offenses, Sullivan's character, history of other offenses and failure on probation, and the need to protect the public. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The court stated reasons for declaring Sullivan ineligible for the Challenge Incarceration Program but eligible for the Substance Abuse Program. The felony sentences complied with WIS. STAT. § 973.01 relating to the imposition of a bifurcated sentence of confinement and extended supervision. We agree with appellate counsel that there would be no arguable merit to a challenge to the sentences.²

² Once Sullivan's probation was revoked, the prosecution was not bound by the sentencing recommendation in the plea agreement and was free to argue for any sentence. *State v. Windom*, 169 Wis. 2d 341, 350, 485 N.W.2d 832 (Ct. App. 1992) (plea agreement is limited to the original sentence for probation).

In addition to the issues discussed above, we have independently reviewed the record.³ Our independent review of the record did not disclose any potentially meritorious issue for appeal. Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report, affirm the judgment of conviction and relieve Attorney Hannah Schieber Jurss of further representation of Sullivan in this matter.

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 Hannah Schieber Jurss is relieved of further representation of Michael Sullivan in this matter.

Diane M. Fremgen
Clerk of Court of Appeals

³ A challenge to the underlying convictions is outside the scope of this appeal from sentencing after revocation. *State ex rel. Marth v. Smith*, 224 Wis. 2d 578, 582 n.5, 592 N.W.2d 307 (Ct. App. 1999). Review of probation revocation is by way of certiorari review to the court of conviction. *Id.* at 583.