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January 4, 2017

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

2015AP1884-CRNM	State of Wisconsin v. Joshua S. Wright (L.C. # 2012CM103)
2015AP1885-CRNM	State of Wisconsin v. Joshua S. Wright (L.C. # 2012CF173)

Before Sherman, J.¹

Joshua Wright appeals judgments, entered in Jackson County Circuit Court Case Nos. 2012CM103 and 2012CF173, sentencing him to jail following the revocation of his probation. Wright also appeals an order denying his motion for sentence modification. Attorney John Bachman has filed a no-merit report seeking to withdraw as appellate counsel. WIS. STAT. RULE 809.32; *see also Anders v. California*, 386 U.S. 738, 744 (1967); and *State ex rel. McCoy v.*

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

Wisconsin Court of Appeals, 137 Wis. 2d 90, 403 N.W.2d 449 (1987), *aff'd*, 486 U.S. 429 (1988). The no-merit report addresses whether there would be any arguably meritorious basis for challenging Wright's sentence. Wright was sent a copy of the report, but has not filed a response. Upon reviewing the entire record, as well as the no-merit report, we conclude that there are no arguably meritorious appellate issues.

We first note that an appeal from a sentence following revocation does not bring an underlying conviction before this court. *See State v. Drake*, 184 Wis. 2d 396, 399, 515 N.W.2d 923 (Ct. App. 1994). Nor can an appellant challenge the validity of any probation revocation decision in this proceeding. *See State ex rel. Flowers v. DHSS*, 81 Wis. 2d 376, 384, 260 N.W.2d 727 (1978) (probation revocation is independent from the underlying criminal prosecution); *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 way of certiorari to the court of conviction). The only potential issue for appeal is the circuit court's imposition of sentence following revocation.

Wright entered no contest pleas in Case No. 2012CF173 to one count of operating without a valid license, as a third or greater offense within three years, and one count of misdemeanor bail jumping. *See* WIS. STAT. § 343.05(3)(a) and 946.49(1)(a). He pled no contest to the same two counts in Case No. 2012CM103. The circuit court withheld sentence and ordered two years of probation in each case, to be served concurrently. After Wright's probation was revoked in both cases, the court sentenced him in Case No. 2012CF173 to 30 days in jail on the operating without a license count, and six months in jail on the bail jumping count, to be served concurrently. The circuit court imposed an identical sentence in Case No. 2012CM103,

to be served consecutively to the sentence in Case No. 2012CF173. The court awarded 106 days of jail credit in Case No. 2012CF173.

Our review of a sentence determination begins “with the presumption that the [circuit] court acted reasonably, and the defendant must show some unreasonable or unjustifiable basis in the record for the sentence complained of.” *State v. Krueger*, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). Here, the record shows that Wright was afforded the opportunity to address the court prior to sentencing. The circuit court considered the standard sentencing factors and explained their application to this case. *See generally State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. The court expressed serious concern over the gravity of the offenses, and took into consideration a charge of possession of narcotic drugs that was dismissed but read in. With respect to the defendant’s character and rehabilitative needs, the court noted that Wright had not complied with the terms of his probation and continued to use drugs. The court acknowledged that, on the positive side, Wright had been employed and maintained a stable residence. The court concluded that jail time was necessary to protect the public and to protect Wright from himself.

The sentences imposed were within the applicable penalty ranges. *See* WIS. STAT. §§ 343.05(3)(a) and (5)(b)1. (providing that a person may be fined not more than \$500 and imprisoned for not more than six months for the third or subsequent offense of operating without a license occurring within three years); § 946.49(1)(a) (classifying misdemeanor bail jumping as a Class A misdemeanor); § 939.51(3)(a) (providing maximum penalty of a fine not to exceed \$10,000 or imprisonment not to exceed nine months, or both, for a Class A misdemeanor). There is a presumption that a sentence “well within the limits of the maximum sentence” is not unduly harsh, and the sentences imposed here were not “so excessive and unusual and so

disproportionate to the offense[s] committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances.”” *State v. Grindemann*, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507 (quoted source omitted).

In addition, we agree with counsel that there would be no arguable merit to challenging the circuit court’s denial of Wright’s pro se motion for sentence modification. The motion alleged, as a new factor, Wright’s commitment to sobriety while in jail. The circuit court properly concluded that a change in attitude that increases the chance for rehabilitation is not a new factor justifying sentence modification. *See Krueger*, 119 Wis. 2d at 335 (consideration of an appellant’s progress in the rehabilitation system is not a “new factor”).

Upon our independent review of the record, we have found no other arguable basis for reversing the judgments and order. *See State v. Allen*, 2010 WI 89, ¶¶81-82, 328 Wis. 2d 1, 786 N.W.2d 124. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

IT IS ORDERED that the judgments and order are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney John Bachman is relieved of any further representation of Joshua Wright in these matters. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals