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April 24, 2019

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

2017AP2004-CRNM State of Wisconsin v. Jeremy L. Rigelsky
(L.C. #2005CF740)

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

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Jeremy L. Rigelsky appeals a judgment imposing a sentence after the revocation of his probation. His appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2017-18)[1] and ***Anders v. California***, 386 U.S. 738, 744 (1967). Rigelsky filed a response to the

[1] All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

no-merit report, and appellate counsel notified this court that she did not intend to file a supplemental no-merit report absent further court order. Upon consideration of the no-merit report, Rigelsky's response, and our independent review of the record, we conclude that the judgment may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

In 2006, upon Rigelsky's guilty plea to one count of burglary, the circuit court withheld sentence and ordered a five-year term of probation to run consecutive to a prison sentence imposed on a separate count in the same case.[2] On February 15, 2017, following the revocation of his probation, Rigelsky appeared in front of a new circuit court judge for sentencing. The court imposed an eight-year sentence, bifurcated into four years of initial confinement and four years of extended supervision. The sentence was ordered to run consecutive to a previously imposed sentence in a separate case. The court found Rigelsky ineligible for both the Challenge Incarceration Program and the Substance Abuse Program. After learning that Rigelsky's presentence custodial time was credited to a previously imposed sentence, the circuit court

[2] The instant burglary conviction represents count two of the information. At his 2006 plea and sentencing hearing, Rigelsky was also convicted of count one, first-degree recklessly endangering safety. The original sentencing court imposed an eight-year bifurcated sentence on count one, and Rigelsky has completed that sentence.

amended the judgment to reflect that Rigelsky would receive zero days of sentence credit under WIS. STAT. § 973.155.[3]

Because this matter is before us following sentencing after probation revocation, Rigelsky's underlying conviction is not before us. *See* ***State v. Drake***, 184 Wis. 2d 396, 399, 515 N.W.2d 923 (Ct. App. 1994). Our review is limited to the circuit court's post-revocation sentence.

Sentencing after probation revocation is reviewed "on a global basis treating the latter sentencing as a continuum of the" original sentencing hearing. *See* ***State v. Wegner***, 2000 WI App 231, ¶7, 239 Wis. 2d 96, 619 N.W.2d 289. Thus, at sentencing after probation revocation, we expect the court will consider many of the same objectives and factors that it is expected to consider at the original sentencing hearing. *See* ***id.***

We agree with appellate counsel's conclusion that there is no merit to any potential issue challenging the sentence imposed after revocation. The circuit court considered the seriousness of the offense, the defendant's character, 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 acknowledged that "there was a certain degree of optimis[m] back when sentence was first imposed in this case" but stated that given Rigelsky's actions in the intervening years and his failure to take advantage of "the

[3] The circuit court originally ordered 157 days of presentence credit. The Department of Corrections wrote a letter informing the circuit court that the time Rigelsky spent in custody from September 8, 2016, through his post-revocation sentencing hearing, was credited toward his sentence in La Crosse County Circuit Court case No. 2013CF463. Because the sentence in the instant case was ordered to run consecutive to No. 2013CF463, Rigelsky is not entitled to receive sentence credit in this case. *See* ***State v. Boettcher,*** 144 Wis. 2d 86, 87, 423 N.W.2d 533 (1988) ("Credit is to be given on a day-for-day basis, which is not to be duplicatively credited to more than one of the sentences imposed to run consecutively" because this would amount to dual credit.).

tools available in the community," that view appeared "to have been overly optimistic." The circuit court's sentence was a demonstrably proper exercise of discretion with which we will not interfere. *See* ***State v. Gallion***, 2004 WI 42, ¶¶17-18, 270 Wis. 2d 535, 678 N.W.2d 197. Further, we cannot conclude that the eight-year sentence when measured against the possible maximum sentence of twelve and one-half years is so excessive or unusual as to shock public sentiment. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

In his response to the no-merit report, Rigelsky attacks the circumstances surrounding the entry of his 2006 plea, including trial counsel's performance. As stated in appellate counsel's letter informing this court that she would not file a supplemental no-merit report, Rigelsky cannot use the instant appeal to challenge his original plea and conviction. ***Drake***, 184 Wis. 2d at 399. The potential issues he raises are beyond the scope of our review in this appeal and we will not discuss them further.

Our review of the record discloses no other potential issue for appeal. Therefore,

IT IS ORDERED that the judgment of conviction is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Diane C. Lowe is relieved from further representing Jeremy L. Rigelsky in this appeal pursuant to WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published

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Sheila T. Reiff

Clerk of Court of Appeals