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DISTRICT IV

January 9, 2019

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

2017AP2506-CRNM	State of Wisconsin v. Desmond M. Murphy (L.C. # 2010CF2744)
2017AP2507-CRNM	State of Wisconsin v. Desmond M. Murphy (L.C. # 2012CF736)

Before Sherman, Blanchard, and Kloppenburg, 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).

Attorney David Karpe, counsel for Desmond Murphy, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2015-16),¹ concluding that there is no basis for challenging

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

the sentences imposed after revocation of Murphy's probation in these consolidated appeals. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738, 744 (1967), we conclude that there is no arguable merit to any issue that could be raised on appeal. Therefore, we summarily affirm the judgments of conviction. *See* WIS. STAT. RULE 809.21.

Murphy pled no contest to three misdemeanors and pled guilty to felony drug counts for possession with intent to deliver cocaine and possession with intent to deliver THC, in Rock County Circuit Court Case No. 2010CF2744. He entered into a hold-open agreement with the State. Under that agreement, entry of judgment was deferred on the felony counts, and Murphy was placed on probation with sentence withheld for the misdemeanor counts. The parties stipulated at a later hearing that Murphy had violated the hold-open agreement, and the circuit court entered judgment on the felony drug counts. At that same hearing, Murphy entered a plea of guilty to a charge of bail jumping in a second case, Rock County Circuit Court Case No. 2012CF736. Pursuant to a joint sentencing recommendation in the two cases, the court placed Murphy on four years of probation with nine months of jail time as a condition of probation.

Murphy's probation was later revoked. At a hearing on October 3, 2016, the circuit court sentenced him to ten years of initial confinement and six years of extended supervision for possession with intent to deliver cocaine, one year of initial confinement and one year of extended supervision for possession with intent to deliver THC, and one year of initial confinement and two years of extended supervision for bail jumping, all to be served concurrently. Murphy now appeals. Neither the underlying convictions nor the revocation is the subject of this appeal. *See State v. Drake*, 184 Wis. 2d 396, 399, 515 N.W.2d 923 (Ct. App.

1994). This court's review is limited to whether the circuit court properly exercised its sentencing discretion.

We conclude that there would be no arguable merit to challenging the circuit court's exercise of its sentencing discretion. Our review of a sentence begins "with the presumption that the trial court acted reasonably, and the defendant must show some unreasonable or unjustifiable basis in the record for the sentence." *State v. Krueger*, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). Here, the record shows that Murphy 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 considered the seriousness of the offenses and Murphy's history of drug-related charges, and noted that Murphy had been using his employment as a barber as a way to sell drugs while on probation. With respect to the defendant's character and rehabilitative needs, the court noted that Murphy had been given many opportunities to get himself on the right track, but had failed to do so, and that probation had not been successful for him. The court concluded that jail time was necessary to protect the community and to deter Murphy from further crime.

The components of the bifurcated sentences imposed were within the applicable penalty ranges. *See* WIS. STAT. §§ 961.41(1m)(cm)4. (classifying possession with intent to deliver cocaine in an amount more than 40 grams as a Class C felony); 961.41(1m)(h)1. (classifying possession with intent to deliver THC in an amount less than or equal to 200 grams as a Class I felony); 946.49(1)(b) (classifying bail jumping as a Class H felony); 973.01(2)(b)3. and (d)2. (providing maximum terms of twenty-five years of initial confinement and fifteen years of extended supervision for a Class C felony); 973.01(2)(b)9. and (d)6. (providing maximum terms

of one-and-a-half years of initial confinement and two years of extended supervision for a Class I felony); 973.01(2)(b)8. and (d)5. (providing maximum terms of three years of initial confinement and three years of extended supervision for a Class H felony).

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 sources omitted).

Upon our independent review of the record, we have found no other arguable basis for reversing the judgments of conviction. *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.

Accordingly,

IT IS ORDERED that the judgments of conviction are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that David Karpe is relieved of any further representation of Desmond Murphy in these matters pursuant to WIS. STAT. RULE 809.32(3).

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

Sheila T. Reiff
Clerk of Court of Appeals