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DISTRICT IV

July 9, 2020

To:

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

2019AP245-CRNM State of Wisconsin v. Chase M. Guckenberger (L.C. # 2016CF499)

Before Blanchard, Kloppenburg, and Graham, 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 Ellen Krahn, appointed counsel for Chase Guckenberger, has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2017-18)¹ and *Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit report addresses whether there

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

would be arguable merit to a challenge to the sentence imposed after revocation of Guckenberger's probation. Guckenberger was sent a copy of the report, but has not filed a response. Upon independently reviewing the entire record, as well as the no-merit report, we agree with counsel's assessment that there are no arguably meritorious appellate issues. Accordingly, we affirm.

In May 2017, Guckenberger was convicted of possession of an electric weapon. WIS. STAT. § 941.295. The court withheld sentence and imposed two years of probation. In July 2018, Guckenberger was sentenced after revocation of his probation to two years of initial confinement and three years of extended supervision.

The appeal in this case from the sentence following 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 before us in 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). The only potential appellate issues at this point in the proceedings relate to sentencing following revocation.

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.”² *State v. Krueger*, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984) (citation omitted). Here, after competency proceedings, the circuit court determined that Guckenberger was competent to proceed and represent himself and that he had voluntarily and intelligently waived his right to counsel as to the sentencing after revocation. The Department of Corrections recommended a sentence of two years of initial confinement and two years of extended supervision. The State recommended a sentence of two-and-a-half years of initial confinement and three years of extended supervision. Guckenberger asked for a sentence of one year in jail. The court explained that it considered facts pertinent to the standard sentencing factors and objectives, including the seriousness of the offense, Guckenberger’s character, and the need to protect the public. *See State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. The court sentenced Guckenberger to two years of initial confinement and three years of extended supervision. The sentence was within the maximum Guckenberger faced and, given the facts of this case, there would be no arguable merit to a claim that the sentence was unduly harsh or excessive. *See State v. Stenzel*, 2004 WI App 181, ¶21, 276 Wis. 2d 224, 688 N.W.2d 20 (a sentence is unduly harsh or excessive “only where the sentence is so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances” (quoted source omitted)). The court also awarded Guckenberger 341 days of sentence credit. We discern no other basis to challenge the sentence imposed by the circuit court.

² A circuit court’s duty at sentencing after revocation is the same as its duty at an original sentencing. *See State v. Wegner*, 2000 WI App 231, ¶7 n.1, 239 Wis. 2d 96, 619 N.W.2d 289.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. 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 judgment of conviction is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Ellen Krahn is relieved of any further representation of Chase Guckenberger in this matter. *See* 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