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DISTRICT II

July 22, 2020

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

2019AP131-CRNM State of Wisconsin v. Marvell J. King (L.C. #2015CF1037)

Before Neubauer, C.J., Reilly, P.J., Gundrum, J.

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).

Marvell J. King appeals from a judgment imposing 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), addressing whether the circuit

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

court appropriately exercised its discretion in imposing sentence. King has not responded. Upon consideration of the no-merit report 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.

Upon his guilty plea, King was convicted of burglary (count one) and, in March 2016, the circuit court withheld sentence and ordered a five-year term of probation.² On April 4, 2018, following the revocation of his probation, King returned to the court for sentencing. The court imposed a bifurcated sentence totaling four and one-half years, with eighteen months of initial confinement followed by three years of extended supervision. The sentence was ordered “to be served consecutively to existing sentences.”³

An appeal from a judgment imposing sentence after probation 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 the subject of this appeal. *See State ex rel. Flowers v. DHSS*, 81 Wis. 2d 376, 384, 260 N.W.2d 727 (1978) (probation revocation is 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). This court’s review is limited to issues arising from the sentence imposed after revocation.

² As part of the same proceeding, King also pled guilty to count two, attempted burglary, and the circuit court imposed a three-year bifurcated sentence. King’s probation on count one ran concurrent with his prison sentence on count two.

³ King’s extended supervision on count two was simultaneously revoked, and the administrative law judge ALJ ordered King reincarcerated for one year, six months, and three days.

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. The court should consider many of the same objectives and factors it is expected to consider at the original sentencing hearing. *See id.* Where, as here, the same judge presided over the original sentencing and the sentencing after revocation, the judge need not revisit the original sentencing explanation; we consider that reasoning implicitly adopted. *See id.*, ¶9.

Having independently reviewed the record, we agree with appellate counsel’s analysis and conclusion that any challenge to King’s sentence after probation revocation would lack arguable merit.⁴ Prior to imposing sentence, the circuit court reviewed file documents pertaining to the original sentencing (including the presentence investigation report), as well as the revocation summary and the ALJ’s revocation decision. The court considered appropriate factors, did not consider inappropriate factors, and reached a reasonable result. Further, we cannot conclude that the bifurcated sentence of four and one-half years, when measured against the possible maximum 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).

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

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

⁴ Appellate counsel mistakenly suggests in the first paragraph of the no-merit report that King was sentenced after probation revocation in connection with his *attempted* burglary conviction (count two). This misstatement is immaterial to the analysis set forth in counsel’s no-merit report, and does not alter our conclusion that no issue of arguable merit arises from the sentence imposed after the revocation of King’s burglary conviction (count one).

IT IS FURTHER ORDERED that Attorney Gregory Bates is relieved from further representing Marvell J. King in this appeal. *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