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DISTRICT II

January 15, 2025

To:

Hon. Sandra J. Giernoth
Circuit Court Judge
Electronic Notice

Connie Mueller
Clerk of Circuit Court
Ozaukee County Justice Center
Electronic Notice

Anne Christenson Murphy
Electronic Notice

Howard E. Leventhal, #699951
Dodge Correctional Inst.
P.O. Box 800
Waupun, WI 53963

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

2024AP95-CR

State of Wisconsin v. Howard E. Leventhal (L.C. #2021CF16)

Before Gundrum, P.J., Grogan and Lazar, 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).

Howard E. Leventhal, pro se, appeals from a judgment entered following revocation of his probation. He raises a multitude of issues, most of which relate to the underlying stalking conviction, that cannot be raised in an appeal from this post-revocation judgment. He also challenges the sentence imposed, claiming the circuit court failed to consider the sentencing factors and imposed a sentence that exceeded the maximum and was grossly disproportionate to the crime. He further contends that he should not have to serve the two-year extended supervision portion of his sentence because he already served two years of probation, which he sees as being the same thing. Finally, he believes the travel restrictions and the lawsuit filing restrictions imposed upon him are too broad. Based upon our review of the briefs and Record,

we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22).¹ We affirm.

In 2021, Leventhal pled no contest to one count of felony stalking.² The circuit court withheld sentence and placed him on a three-year probation. Post-sentence, Leventhal appealed his stalking conviction to this court, raising multiple claims. We rejected all his claims and affirmed his stalking conviction. *See State v. Leventhal*, No. 2021AP1184-CR, unpublished op. and order (WI App Mar. 29, 2023).

A few months after we issued that decision, Leventhal filed a WIS. STAT. § 974.06 postconviction motion alleging nine claims related to the stalking conviction. The circuit court summarily denied the motion, holding it was procedurally barred based on our decision in his direct appeal. Leventhal did not appeal that court order.

In September 2023, Leventhal's probation was revoked, and the Department of Corrections recommended he be sentenced on the stalking conviction to eighteen months of initial confinement and two years of extended supervision. In December 2023, after holding a sentencing hearing over the course of two days, the circuit court imposed the recommended sentence. Judgment was entered. Leventhal appeals this post-revocation judgment.

In his pro se brief, Leventhal raises multiple claims, including many that challenge the underlying stalking conviction, including: his plea on the stalking charge was coerced; venue on

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

² Leventhal also pled no contest to a misdemeanor charge for violating a restraining order and was sentenced to time served. Resolution of that matter is not at issue on appeal.

the stalking conviction was improper; the circuit court's handling of the stalking conviction lacked competence; his prosecution was illegally based on him filing lawsuits; he should not have been prosecuted for stalking based on the First Amendment; and the stalking statute does not cover his actions. He also raises a number of claims challenging his post-revocation sentence, including: the court failed to consider the proper sentencing factors; it imposed a grossly disproportionate sentence that exceeded the maximum penalty; and it imposed travel and lawsuit filing restrictions that were too broad.³

First, we reject every argument Leventhal makes in regard to the original judgment for the underlying stalking conviction because this is an appeal from a post-revocation judgment. Our review is limited to the new judgment and post-revocation sentence. *See State v. Scaccio*, 2000 WI App 265, ¶10, 240 Wis. 2d 95, 622 N.W.2d 449; *State v. Bush*, 2004 WI App 193, ¶13, 276 Wis. 2d 806, 688 N.W.2d 752.⁴ “A challenge to a post-revocation sentence does not bring the original judgment of conviction before the court.” *Scaccio*, 240 Wis. 2d 95, ¶10.

Second, as for his claims of error regarding the post-revocation sentence, which this court may review, Leventhal failed to file a postconviction motion in the circuit court. *See State v.*

³ Leventhal also asserts a number of other contentions that are not sufficiently developed to specifically mention. To the extent we have not addressed those arguments, they are deemed rejected. *See State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992); *ABKA Ltd. P'ship v. Board of Rev.*, 231 Wis. 2d 328, 349 n.9, 603 N.W.2d 217 (1999) (“This court will not address undeveloped arguments.”).

⁴ Even if our review were not limited, we would reject all of Leventhal’s arguments because they are procedurally barred under *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994). He previously raised these issues in his direct appeal and in his WIS. STAT. § 974.06 motion. To the extent he raises any new issues, he failed to provide a sufficient reason to avoid the *Escalona-Naranjo* procedural bar. *See State v. Romero-Georgana*, 2014 WI 83, ¶34, 360 Wis. 2d 522, 849 N.W.2d 668. Further, Leventhal is not permitted to subvert the procedural bar by simply rephrasing an issue a court has previously rejected. *See State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991).

Walker, 2006 WI 82, ¶30, 292 Wis. 2d 326, 716 N.W.2d 498 (requiring defendant to file postconviction motion in circuit court to raise any perceived errors in sentence before challenging sentence on appeal). In any event, we have carefully reviewed the transcripts from the sentencing and conclude that Leventhal's sentencing challenges are all without merit. The Record confirms that the circuit court appropriately considered the relevant sentencing objectives and factors as set forth in **State v. Gallion**, 2004 WI 42, ¶40, 270 Wis. 2d 535, 678 N.W.2d 197. It considered the gravity of the offense, the character of the defendant, and the need to protect the public, explained the reasons for the sentence, and imposed a sentence within the maximum authorized by law. *See Scaccio*, 240 Wis. 2d 95, ¶18. The sentence was not so excessive so as to shock the public's sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). Given the facts and circumstances in this case, the court properly exercised its discretion, and the court's restrictions on travel and filing lawsuits were reasonable. Further, there is no legal basis upon which to eliminate the two-year extended supervision simply because Leventhal served a two-year probation. At the time Leventhal served his probation, his sentence for stalking had been withheld. Once his probation was revoked, the court could lawfully impose the sentence it did, including the two-year period of extended supervision.

Therefore,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

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

*Samuel A. Christensen
Clerk of Court of Appeals*