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**DISTRICT IV**

December 12, 2024

To:

Hon. Julie Genovese  
Circuit Court Judge  
Electronic Notice

Jeff Okazaki  
Clerk of Circuit Court  
Dane County Courthouse  
Electronic Notice

Carlos Bailey  
Electronic Notice

Jennifer L. Vandermeuse  
Electronic Notice

Kevin P. Erstad 183968  
Oshkosh Correctional Inst.  
P.O. Box 3310  
Oshkosh, WI 54903-3310

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

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2023AP852-CRNM	State of Wisconsin v. Kevin P. Erstad (L.C. # 2019CF1105)
2023AP853-CRNM	State of Wisconsin v. Kevin P. Erstad (L.C. # 2019CF1907)
2023AP854-CRNM	State of Wisconsin v. Kevin P. Erstad (L.C. # 2020CF356)
2023AP855-CRNM	State of Wisconsin v. Kevin P. Erstad (L.C. # 2020CF577)

Before Blanchard, Nashold, and Taylor, 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 Carlos Bailey has filed a no-merit report seeking to withdraw as appellate counsel for appellant Kevin Erstad. *See* WIS. STAT. RULE 809.32 (2021-22)<sup>1</sup> and *Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit report addresses whether there would be arguable merit to any issues arising from the sentence imposed by the circuit court following the revocation of Erstad's probation. Erstad was sent a copy of the no-merit report but has not filed

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

a response. On our independent review of the no-merit report and the record, we agree with counsel's assessment that there are no arguably meritorious appellate issues. We summarily affirm. *See* WIS. STAT. RULE 809.21.

Erstad was charged with the following offenses across four cases: Operating While Intoxicated (OWI) and Operating With a Prohibited Blood Alcohol Concentration (PAC), both as a fifth offense; three counts of disorderly conduct as acts of domestic abuse; criminal damage to property as an act of domestic abuse; resisting arrest; violating a no-contact order after a domestic abuse arrest; and eight counts of felony bail-jumping, including three as acts of domestic abuse. Pursuant to a plea agreement, Erstad pled guilty to OWI as a fifth offense, one count of disorderly conduct as an act of domestic abuse, resisting arrest, and two counts of felony bail-jumping, with one as an act of domestic abuse. The circuit court withheld sentence and imposed three years of probation, with nine months of conditional jail time. Erstad's probation was revoked, and he was returned to court for sentencing. The court sentenced Erstad to a total of four years of initial confinement and five years of extended supervision.

This appeal from the sentence imposed following revocation of probation does not bring the underlying conviction before us. *See State v. Drake*, 184 Wis. 2d 396, 398-99, 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 review in circuit court). The only

potential appellate issues at this point in the proceedings relate to sentencing following revocation.

This court's review of a sentence determination 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 complained of."<sup>2</sup> *State v. Krueger*, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). Here, the record indicates that the circuit court afforded Erstad the opportunity to address the court prior to sentencing. The court explained that it considered facts pertinent to the standard sentencing factors and objectives, including the seriousness of the offenses, Erstad's rehabilitative needs, 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. Given the facts of the convictions and revocations, there would be no arguable merit to a claim that the sentences were 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)). We agree with counsel's assessment that further proceedings related to the sentence imposed after revocation would be wholly frivolous.

On our independent review of the record, we have found no other arguable basis for reversing the judgments. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

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<sup>2</sup> 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.

IT IS ORDERED that the judgments are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Carlos Bailey is relieved of any further representation of Kevin Erstad in this matter. *See* WIS. STAT. RULE 809.32(3).

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

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*