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**DISTRICT II**

March 19, 2014

To:

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

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2013AP789-CRNM      State of Wisconsin v. Dragisa Pavlovic (L.C. #2008CM000452)

Before Brown, C.J.<sup>1</sup>

Dragisa Pavlovic appeals from a judgment of conviction imposing a sentence after the revocation of probation. Pavlovic's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32, and *Anders v. California*, 386 U.S. 738 (1967). Pavlovic received a copy of the report, was advised of his right to file a response, and has elected not to do so. Because the appeal is moot, we summarily affirm the judgment. *See* WIS. SATE. RULE 809.21.

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

This appeal brings before the court only the sentence imposed after the revocation of probation.<sup>2</sup> On October 9, 2009, Pavlovic was sentenced to consecutive maximum jail terms on convictions of battery, intimidation of a victim, and disorderly conduct, all as an incident of domestic violence, and three counts of bail jumping, for a total of forty-eight months. The no-merit report indicates that Pavlovic has served his entire sentence and was released from custody in December 2012. Even if there is a meritorious challenge to the sentence imposed, only the length of the sentence could change upon a successful appeal. Since Pavlovic has served the maximum sentence, a successful appeal would not affect Pavlovic's custodial status. The appeal is moot.<sup>3</sup> See *State v. Barfell*, 2010 WI App 61, ¶9, 324 Wis. 2d 374, 782 N.W.2d 437 (issue is moot when “[n]othing we order can have any practical legal effect”).

Despite mootness, we have conducted an independent review of the sentencing record. We agree with the no-merit report's analysis that the sentencing court properly exercised its discretion in explaining why the maximum terms were appropriate to protect the public, that the

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<sup>2</sup> An appeal from sentencing after revocation is limited to issues raised by the events of the resentencing hearing and the judgment entered as a result of that sentencing hearing. *State v. Scaccio*, 2000 WI App 265, ¶10, 240 Wis. 2d 95, 622 N.W.2d 449. An appeal taken from sentencing after revocation does not bring the original judgment of conviction before this court. *Id.*

<sup>3</sup> The time for Pavlovic to seek postconviction relief from the sentence imposed after revocation in this case was stayed while he sought postconviction relief in Racine County case 2008CM624. The deadline was set to sixty days after remittitur following an appeal. Pavlovic's conviction in case 2008CM624 was affirmed August 1, 2012, *State v. Pavlovic*, No. 2011AP2687-CR, unpublished slip op. (WI App Aug. 1, 2012) (*Pavlovic I*), and remittitur occurred December 11, 2012, after the denial of a petition for review. The no-merit notice of appeal was filed in this case after Pavlovic had served the entire maximum sentence. We question why appointed counsel commenced and maintained the no-merit appeal as to the sentence imposed after revocation for which no relief could be granted and whether he advised Pavlovic that the appeal is moot. That the appeal was moot from its inception is also true even though Pavlovic appealed the original sentence to probation to challenge the sufficiency of the evidence at the court trial. See *State v. Pavlovic*, No. 2013AP1180-CR, unpublished slip op. (WI App Oct. 23, 2013) (*Pavlovic II*) (affirming the conviction). If that appeal would have been successful and the judgment of conviction vacated or reversed, the sentence after the revocation of probation would have been void.

sentence was not excessive, and that there is no possible claim that Pavlovic was sentenced on the basis of inaccurate information. Thus, we accept the no-merit report and discharge appellate counsel of the obligation to represent Pavlovic further in this appeal. *See* WIS. STAT. RULE 809.32(3).

Upon the foregoing reasons,

IT IS ORDERED that the appeal is dismissed; the judgment of conviction is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Matthew S. Pinix is relieved from further representing Dragisa Pavlovic in this matter. *See* WIS. STAT. RULE 809.32(3).

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*