



OFFICE OF THE CLERK  
**WISCONSIN COURT OF APPEALS**

110 EAST MAIN STREET, SUITE 215  
P.O. BOX 1688  
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880  
TTY: (800) 947-3529  
Facsimile (608) 267-0640  
Web Site: [www.wicourts.gov](http://www.wicourts.gov)

**DISTRICT III/II**

June 4, 2014

To:

Hon. Donald R. Zuidmulder  
Circuit Court Judge  
Brown County Courthouse  
P.O. Box 23600  
Green Bay, WI 54305-3600

Jason B. Beck  
Clerk of Circuit Court  
Brown County Courthouse  
P.O. Box 23600  
Green Bay, WI 54305-3600

Donald T. Lang  
Asst. State Public Defender  
P. O. Box 7862  
Madison, WI 53707-7862

David L. Lasee  
District Attorney  
P.O. Box 23600  
Green Bay, WI 54305-3600

Gregory M. Weber  
Assistant Attorney General  
P.O. Box 7857  
Madison, WI 53707-7857

Mario C. Olivarez Jr. 596693  
Kettle Moraine Corr. Inst.  
P.O. Box 282  
Plymouth, WI 53073-0282

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

---

2014AP462-CRNM      State of Wisconsin v. Mario C. Olivarez, Jr. (L.C. #2012CF605)

Before Neubauer, P.J., Reilly and Gundrum, JJ.

Mario C. Olivarez, Jr. appeals from a judgment sentencing him after revocation of his probation for one misdemeanor count of battery, domestic abuse, and one felony count of battery causing great bodily harm, domestic abuse. Olivarez's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2011-12)<sup>1</sup> and *Anders v. California*, 386 U.S. 738 (1967). Olivarez received a copy of the report, was advised of his right to file a response, and has elected

---

<sup>1</sup> All references to the Wisconsin Statutes are to the 2011-12 version.

not to do so. After reviewing the record and counsel's report, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment. WIS. STAT. RULE 809.21.

The no-merit report addresses whether the circuit court properly exercised its discretion in imposing its sentence after revocation. The circuit court's duty at sentencing after probation revocation is the same as its duty at the original sentencing. *State v. Wegner*, 2000 WI App 231, ¶7 n.1, 239 Wis. 2d 96, 619 N.W.2d 289. Where, as in the present case, the same judge presides at both proceedings, we will consider the original sentencing reasons to be implicitly adopted at the sentencing after revocation. *State v. Reynolds*, 2002 WI App 15, ¶8, 249 Wis. 2d 798, 643 N.W.2d 165 (2001).

Here, the record reveals that the circuit court's sentencing decision had a "rational and explainable basis." *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (citation omitted). In imposing an aggregate sentence of six years of imprisonment and nine months in jail, the court considered the seriousness of the offenses, Olivarez's character, and the need to protect the public. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Under the circumstances of the case, which were aggravated by Olivarez's multiple rules violations and new criminal charges,<sup>2</sup> the sentence imposed does not "shock public sentiment and violate the judgment of reasonable people concerning what is right and proper." See *Ocanas*

---

<sup>2</sup> According to the revocation summary, about a month and seven days after being placed on probation, Olivarez violated the absolute sobriety condition of his probation. Less than two months later, he was arrested for operating while intoxicated. About a month after that, he was arrested again for operating while intoxicated-causing injury.

*v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We agree with counsel that a challenge to Olivarez's sentence would lack arguable merit.

Our independent review of the record does not disclose any potentially meritorious issue for appeal.<sup>3</sup> Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report and relieve Attorney Donald T. Lang of further representation in this matter.

Upon the foregoing reasons,

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 Attorney Donald T. Lang is relieved of further representation of Olivarez in this matter.

---

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

---

<sup>3</sup> Any challenge to the underlying convictions is outside the scope of this appeal. *See State ex rel. Marth v. Smith*, 224 Wis. 2d 578, 582 n.5, 592 N.W.2d 307 (Ct. App. 1999).