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**DISTRICT III**

August 12, 2014

To:

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Circuit Court Judge  
Trempealeau Co. Courthouse  
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You are hereby notified that the Court has entered the following opinion and order:

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2013AP2823-CRNM      State of Wisconsin v. Denis K. Lapka (L.C. #2007CF15)

Before Hoover, P.J., Stark, J., and Thomas Cane, Reserve Judge.

Counsel for Denis Lapka has filed a no-merit report concluding there is no basis for appealing a sentence imposed after revocation of probation. Lapka was advised of his right to respond and has not responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude there is no arguable merit to any issue that could be raised and summarily affirm.

Lapka was convicted of fleeing a traffic officer. Sentence was withheld and he was placed on probation consecutive to a sentence in an Eau Claire court case for misappropriating

information. Lapka's probation was subsequently revoked and the court sentenced him to eighteen months' initial confinement and eighteen months' extended supervision, consecutive to any sentence he was currently serving.

Because this appeal arises from a judgment after revocation, Lapka is barred from challenging that judgment or raising issues in this appeal that relate to the underlying conviction. *See State v. Tobey*, 200 Wis. 2d 781, 784, 548 N.W.2d 95 (Ct. App. 1996). Further, revocation is independent from the underlying criminal action. *See State ex rel. Flowers v. DH&SS*, 81 Wis. 2d 376, 384, 260 N.W.2d 727 (1978). This court's review is limited to whether the court properly exercised its sentencing discretion.

The record discloses no arguable basis for challenging the sentencing court's discretion. The court considered the proper sentencing factors. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). The court emphasized Lapka's "poor record here under probation." The court noted there were twenty separate violations, and Lapka had just been convicted of a felony offense in another county. The sentence was allowable under law and not excessive or unduly harsh.

IT IS ORDERED that the judgment after revocation of probation is summarily affirmed. *See WIS. STAT. RULE 809.21* (2011-12).

IT IS FURTHER ORDERED that attorney Eileen Hirsch is relieved of further representing Lapka in this matter.

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