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**DISTRICT IV**

August 18, 2014

To:

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

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2013AP1042-CRNM      State of Wisconsin v. Benjamin R. Altman (L.C. # 2009CF265)

Before Blanchard, P.J., Lundsten and Kloppenburg, JJ.

Attorney Tristan Breedlove has filed a no-merit report seeking to withdraw as appointed counsel for appellant Benjamin Altman. *See* WIS. STAT. RULE 809.32 (2011-12)<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 a challenge to the sentence imposed by the circuit court following revocation of Altman's probation. Altman was sent a copy of the report, but has not filed a response. Upon

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

independently reviewing the entire record, as well as the no-merit report, we agree with counsel's assessment that there are no arguably meritorious appellate issues.

In November 2009, Altman pled guilty to three counts of burglary. Forty-one other charges were dismissed but read-in for sentencing purposes. Altman received concurrent sentences of five years of probation, sentence withheld. In 2012, Altman was sentenced to five years of initial confinement and five years of extended supervision after his probation was revoked.

The appeal in this case from the sentence following revocation does not bring the underlying conviction before us. *See State v. Drake*, 184 Wis. 2d 396, 399, 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 in circuit court). The only potential appellate issues at this point in the proceedings relate to sentencing following revocation.

Our 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, Altman's revocation summary recommended a sentence

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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.

of four years of initial confinement and two years of extended supervision. The State recommended at least four years of initial confinement and three years of extended supervision. Altman's counsel argued for one year of initial confinement and three years of extended supervision. The court determined that five years of initial confinement and five years of extended supervision was the appropriate sentence.

The court expressly considered facts relevant to the standard sentencing factors and objectives, including Altman's character, the need to protect the public, and the gravity of the offenses. *See State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. The court ordered Altman to submit his DNA and pay the DNA surcharge if he had not already done so, considering that Altman should have the ability to pay the cost of the surcharge while on extended supervision. *See State v. Long*, 2011 WI App 146, ¶7, 337 Wis. 2d 648, 807 N.W.2d 12 (in exercising discretion as to whether to impose DNA surcharge, a circuit court may consider, among other facts, whether the defendant has provided a DNA sample in connection with the case so as to have caused a DNA cost, and the financial resources of the defendant). Additionally, the court granted Altman 394 days of sentence credit, on counsel's stipulation. We discern no erroneous exercise of the court's sentencing discretion.

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

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

IT IS FURTHER ORDERED that Attorney Tristan Breedlove is relieved of any further representation of Benjamin Altman in this matter. *See* WIS. STAT. RULE 809.32(3).

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