



conclude that the judgment may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

Pursuant to a plea agreement, Creggett pled no contest to taking and driving a motor vehicle without the owner's consent contrary to WIS. STAT. § 943.23(2). On January 17, 2012, the trial court withheld sentence in favor of a three-year term of probation. Creggett's probation was revoked in October 2012, and on February 19, 2013, the trial court imposed a three and one-half-year bifurcated sentence, with two years of initial confinement and one and one-half years of extended supervision. The court found Creggett eligible for both the Challenge Incarceration and the Earned Release programs. Creggett filed a timely notice of intent to pursue postconviction relief from the judgment of conviction entered upon sentencing after revocation, and subsequently, a no-merit notice of appeal.<sup>2</sup>

Appellate counsel's no-merit report addresses whether the trial court properly exercised its discretion at the sentencing hearing after revocation. Because this matter is before us following sentencing after probation revocation, Creggett's underlying conviction is not before us. *See State v. Drake*, 184 Wis. 2d 396, 399, 515 N.W.2d 923 (Ct. App. 1994). In addition, Creggett cannot challenge the probation revocation decision. *See State ex rel. Flowers v. DHSS*,

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<sup>2</sup> After revocation proceedings commenced, trial counsel successfully moved to extend the time to file a notice of intent to pursue postconviction relief from the original judgment. Appellate counsel was appointed to represent Creggett on review of both the original judgment and the judgment entered following probation revocation. The no-merit notice of appeal is timely as to and taken from the judgment entered following the revocation of Creggett's probation. Appellate counsel explains that Creggett moved to reinstate his direct appeal rights from the original judgment based on trial counsel's belief that Creggett had an abandonment defense to the charge of conviction. Appellate counsel states that the abandonment defense under WIS. STAT. § 943.23(3m), was not available to Creggett, who was caught driving the vehicle within minutes of it being reported stolen. Given the representations in appellate counsel's no-merit report, we conclude that the scope of this no-merit appeal is limited to the sentence imposed following the revocation of Creggett's probation.

81 Wis. 2d 376, 384, 260 N.W.2d 727 (1978). Our review is limited to the trial court's sentencing discretion.

Sentencing after probation revocation is reviewed “on a global basis treating the latter sentencing as a continuum of the” original sentencing hearing. *See State v. Wegner*, 2000 WI App 231, ¶7, 239 Wis. 2d 96, 619 N.W.2d 289. Thus, at sentencing after probation revocation, we expect the court will consider many of the same objectives and factors that it is expected to consider at the original sentencing hearing. *See id.* When, as here, the same judge presides over both the original sentencing and sentencing after revocation, the judge need not revisit the original sentencing explanation; we consider that reasoning implicitly adopted.<sup>3</sup> *Id.*, ¶9. Additionally, a reviewing court has a duty to affirm a sentence if facts of record show it is sustainable as a proper exercise of discretion. *State v. Kourtidias*, 206 Wis. 2d 574, 588, 557 N.W.2d 858 (Ct. App. 1996).

We agree with appellate counsel's analysis and conclusion that there is no arguably meritorious challenge to the sentence imposed after revocation. The facts of record establish that the sentence was sustainable as a proper exercise of discretion. *See id.* The trial court explicitly stated that it reviewed and considered the information in the revocation summary as well as the transcript of the original sentencing hearing and presentence investigation report. The trial court explained that at the time of Creggett's original sentencing, it had considered Creggett's youth and period of presentence incarceration, and determined that he could be returned to the community “to concentrate on growing up” and acting responsibly. The court stated that it had

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<sup>3</sup> Here, the trial court referenced its remarks from Creggett's original sentencing hearing.

hoped to achieve the objective of protecting the community by encouraging Creggett to modify his behavior through community supervision. The record establishes that the violations underlying Creggett's revocation included disregarding the rules of supervision, providing false information to his agent, and engaging in criminal conduct, namely, sexual intercourse with a child. The facts of record coupled with the court's stated concerns about Creggett's disrespect for the rules of the criminal justice system support the sentencing court's exercise of discretion. Additionally, Creggett faced a maximum bifurcated sentence of six years. Under the circumstances of this case, the three and one-half-year sentence imposed does not "shock public sentiment and violate the judgment of reasonable people concerning what is right and proper." *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the judgment, and discharges appellate counsel of the obligation to represent Creggett further in this appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Jefren E. Olsen is relieved of further representation of Rayshon Jerome Creggett in this matter. *See* WIS. STAT. RULE 809.32(3).

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