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**DISTRICT II**

September 17, 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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2014AP773-CRNM      State of Wisconsin v. Kurtis Bolton (L.C. # 2011CM950)

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

Kurtis Bolton appeals from a judgment sentencing him after revocation of his probation. Bolton'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). Bolton received a copy of the report and was advised of his right to file a response. He has not done so. Upon consideration of the report and an independent review of the record as mandated by *Anders* and RULE 809.32, we summarily

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

affirm the judgment because there are no issues that would have arguable merit for appeal. WIS. STAT. RULE 809.21.

The no-merit report addresses whether the circuit court misused its discretion in imposing a two-year sentence after Bolton's probation was revoked (fifteen months of initial confinement and nine months of extended supervision). We agree with appellate counsel that any appellate challenge to the sentence would lack arguable merit for appeal.<sup>2</sup>

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. The discretion of the sentencing judge must be exercised on a "rational and explainable basis." *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (citation omitted).

The circuit court properly exercised its discretion at sentencing and considered the proper sentencing factors. *Wegner*, 239 Wis. 2d 96, ¶7. The court noted Bolton's character and prior failure on supervision, and the need to protect the public from Bolton's conduct. As the result of a prior felony conviction, Bolton was subject to the habitual criminality provisions of WIS. STAT. § 939.62(1)(a). The sentence complies with *State v. Lasanske*, 2014 WI App 26, ¶¶9-12, 353 Wis. 2d 280, 844 N.W.2d 417, relating to the imposition of a bifurcated sentence of initial

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<sup>2</sup> Any challenge to the underlying conviction for violating state or county institution laws, WIS. STAT. § 946.73, would be outside the scope of this appeal. *State ex rel. Marth v. Smith*, 224 Wis. 2d 578, 582 n.5, 592 N.W.2d 307 (Ct. App. 1999). In addition, "review of probation revocation is by way of certiorari review to the court of conviction." *Id.* at 583.

confinement and extended supervision in the misdemeanor setting. There would be no arguable merit to a challenge to the sentence.

Our independent review of the record does not disclose any potentially meritorious issue for appeal. 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, affirm the judgment and relieve Attorney John Breffeilh of further representation of Bolton 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 John Breffeilh is relieved of further representation of Kurtis Bolton in this matter.

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