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October 19, 2015

To:

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Darrel L. Abramczak
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You are hereby notified that the Court has entered the following opinion and order:

2015AP880-CRNM State of Wisconsin v. Darrel L. Abramczak (L.C. #2012CM2337)

Before Curley, P.J.¹

Darrel L. Abramczak appeals a judgment sentencing him after revocation of his probation. Assistant State Public Defender Katie R. York filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738, 744 (1967). Abramczak was informed of his right to file a response, but he has not done so. After considering the no-merit report and conducting an independent review of the record, we

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

conclude that there are no issues of arguable merit that Abramczak could raise on appeal. Therefore, we summarily affirm. *See* WIS. STAT. RULE 809.21.

Abramczak was convicted of operating while intoxicated, as a third offense, after entering a guilty plea. The circuit court withheld sentence and placed him on probation for one year, with forty-five days in jail as a condition of his probation. Abramczak did not appeal the judgment. Abramczak's probation was subsequently revoked. The circuit court sentenced him to one year in jail, with 179 days of sentence credit. Abramczak has completed serving his sentence.

The no-merit report addresses whether there would be arguable merit to an appellate challenge to the sentence imposed on Abramczak after his probation was revoked. A defendant may appeal a sentence imposed after revocation of probation, but is barred from challenging the underlying judgment of conviction where, as here, relief was not timely sought from that conviction. *See State v. Tobey*, 200 Wis. 2d 781, 784, 548 N.W.2d 95 (Ct. App. 1996). The circuit court's duty at a sentencing after 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 circuit court may consider a variety of facts and circumstances relevant to sentencing, but should bear in mind the primary objectives of sentencing: "the protection of the community, punishment of the defendant, rehabilitation of the defendant, and deterrence to others." *State v. Gallion*, 2004 WI 42, ¶40, 270 Wis. 2d 535, 678 N.W.2d 197.

In deciding to impose a one-year sentence, the circuit court explained that Abramczak had been given multiple opportunities to comply with the terms of his probation, but he made no effort to do so. The circuit court explained that jail was necessary because alternatives to jail had

not caused Abramczak to change his behavior and follow the rules of his supervision. The court considered appropriate factors in deciding what length of sentence to impose and explained its application of the various sentencing guidelines in accordance with the framework set forth in *Gallion*. See *id.*, ¶¶39-46. There are no grounds for a claim that Abramczak was sentenced based on inaccurate information and there are no new factors that could serve as grounds for modifying his sentence. Therefore, we conclude that there would be no arguable merit to an appellate challenge to the sentence.

Our independent review of the record reveals no arguable basis for reversing the judgment. Therefore, we affirm the judgment and relieve Attorney Katie R. York of further representation of Abramczak.

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

IT IS FURTHER ORDERED that Attorney Katie R. York is relieved of any further representation of Abramczak in this matter. See WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals