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**DISTRICT IV**

July 20, 2016

To:

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

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2016AP151-CRNM      State of Wisconsin v. Gregory Allen Thompson (L.C. #  
2011CF962)

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

Gregory Thompson appeals a judgment of conviction sentencing him after probation revocation for five counts of possession of child pornography. WIS. STAT. § 948.12(1m) (2013-14).<sup>1</sup> Attorney Andrew Hinkel filed a no-merit report and seeks to withdraw as appellate counsel. WIS. STAT. RULE 809.32; *see also Anders v. California*, 386 U.S. 738, 744 (1967); *State ex rel. McCoy v. Wisconsin Court of Appeals*, 137 Wis. 2d 90, 403 N.W.2d 449 (1987), *aff'd*, 486 U.S. 429 (1988). The no-merit report addresses the validity of the sentence imposed

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

following revocation. Counsel provided Thompson a copy of the report, but Thompson has not filed a response. Upon reviewing the entire record, as well as the no-merit report, we conclude that there are no arguably meritorious appellate issues.

This is before us on appeal from sentencing after revocation of probation; therefore, it does not bring before us the original judgment of conviction. *See State v. Drake*, 184 Wis. 2d 396, 399, 515 N.W.2d 923 (Ct. App. 1994).

We agree that any challenge to the circuit court's sentence would lack arguable merit. Our review of the circuit court's sentence begins with the "presumption that the [circuit] court acted reasonably," leaving the defendant with the burden to demonstrate "some unreasonable or unjustifiable basis in the record" in order for us to overturn it. *State v. Krueger*, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984).

Counsel's summary of the circuit court's exercise of its sentencing discretion and the evidence in the record supporting the court's ultimate sentence demonstrates the circuit court's compliance with the requisite sentencing considerations set forth in *State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. At the outset, the circuit court noted that Thompson's probation had been revoked for being uncooperative with the polygraph requirements that the conditions of his probation imposed on him, and that was something the court would take into consideration in sentencing Thompson. The circuit court also explained the need to protect the public and the risk that Thompson might move beyond viewing child pornography and towards directly endangering younger people around him. The circuit court recognized as a mitigating factor that Thompson had taken steps toward rehabilitation during the time he was on probation, but also recognized the need for deterrence. The circuit court also

noted that Thompson had been incarcerated for one year in the county jail as an alternative to revocation, due to his failure to abide by his rules of probation. The circuit court fulfilled its sentencing responsibilities set forth in *Gallion*.<sup>2</sup>

The five years of initial confinement and ten years of extended supervision sentence that the circuit court imposed for each count are well within the statutory ranges and were ordered to run concurrently.<sup>3</sup> While Thompson's total imprisonment exposure was 125 years, including seventy-five years of initial confinement and fifty years of extended supervision, the circuit court's sentence totals fifteen years. Thompson also received sentence credit of 545 days.

A sentence well within the applicable statutory maximums is presumed not to be unduly harsh, and reviewing the record independently, as well as according the circuit court's analysis and decision due deference, we conclude that the sentence the circuit court imposed here is not "so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances." *State v. Grindemann*, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507.

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

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<sup>2</sup> The circuit court deemed Thompson eligible for the substance abuse incarceration program.

<sup>3</sup> The maximum sentence the circuit court could have imposed on each count was twenty-five years, with fifteen years of initial confinement and ten years of extended supervision. See WIS. STAT. §§ 948.12(1m) and (3)(a); 939.50(3)(d); 973.01(2)(b)4. and (2)(d)3.

Accordingly,

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

IT IS FURTHER ORDERED that Attorney Andrew Hinkel is relieved of any further representation of Gregory Thompson in this matter pursuant to WIS. STAT. RULE 809.32(3).

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