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**DISTRICT III/IV**

August 31, 2016

To:

Hon. Rod W. Smeltzer  
Circuit Court Judge  
Dunn County Judicial Center  
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Clara Minor  
Clerk of Circuit Court  
Dunn County Judicial Center  
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You are hereby notified that the Court has entered the following opinion and order:

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2015AP2017-CRNM	State of Wisconsin v. Leo Paul Herrera (L.C. # 2013CF138)
2015AP2018-CRNM	State of Wisconsin v. Leo Paul Herrera (L.C. # 2013CF215)

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

These are no-merit appeals by Leo Herrera from sentencing after revocation of probation.

We now dismiss them as moot.

In our order of February 29, 2016, we noted that the records did not contain transcripts of proceedings before sentencing, such as the preliminary hearing and the original plea and sentencing, or the transcript of a hearing held May 27, 2015, on the appellant's motion to modify the judgment of conviction. We ordered counsel to order the additional transcripts.

In a letter dated May 13, 2016, counsel informed us that he had ordered certain transcripts. However, those were all transcripts of hearings that occurred *after* the sentencing after revocation. Despite our order, counsel apparently still did not order transcripts of proceedings before the original judgment of conviction that are relevant to review of sentencing after revocation. However, we will not further attempt to obtain counsel's compliance with our order because we now conclude that the appeals are moot.

An issue is moot when its resolution will not have a practical effect on the underlying controversy, and generally moot issues will not be considered by an appellate court. *State ex rel. Olson v. Litscher*, 2000 WI App 61, ¶3, 233 Wis. 2d 685, 608 N.W.2d 425. Here, the only potential issue before us in these appeals is Herrera's sentences after revocation, because an appeal from such a judgment does not bring before us issues related to the earlier judgment of conviction. See *State v. Drake*, 184 Wis. 2d 396, 399, 515 N.W.2d 923 (Ct. App. 1994).

In that May 13 letter, counsel advised us that Herrera was released from jail in December 2015, is not on supervision with the Department of Corrections, and that counsel does not have a current address for Herrera. In sentencing Herrera after revocation the circuit court had imposed two concurrent sentences of twelve months in jail. The court did not impose a fine or restitution. The sentences were imposed in April 2015 and, with applicable sentence credit as shown on the judgments, we see no reason to doubt counsel's assertion that Herrera has been released.

In stating that Herrera is not currently under Department supervision, we understand counsel to be saying that there is no sentence in some other case that has been made consecutive to the sentences before us in these appeals. That is significant because if there was a consecutive

sentence, and the sentences before us were reduced, even though already served, the starting date of the consecutive sentence might be altered, leading to an earlier release date.

Under these circumstances, we are not able to see any practical effect that an appeal of Herrera's sentences after revocation could have. The sentences are served, so Herrera cannot be released. There is no financial penalty that could be refunded. There is no sentence currently running that might be affected by a reduction in the earlier sentences.

Therefore, we conclude that it would be frivolous for Herrera to argue that the sentences should be reduced, because the issue is moot. Because those sentences are the only issues before us, the entire appeal is moot and, accordingly, we dismiss it.

IT IS ORDERED that these appeals are dismissed as moot.

IT IS FURTHER ORDERED that Attorney John Bachman is relieved of further representation of Leo Herrera in these matters.

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