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110 EAST MAIN STREET, SUITE 215  
P.O. BOX 1688  
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880  
TTY: (800) 947-3529  
Facsimile (608) 267-0640  
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**DISTRICT III**

September 7, 2016

To:

Hon. Gregory B. Huber  
Circuit Court Judge  
Marathon County Courthouse  
500 Forest St.  
Wausau, WI 54403

Shirley Lang  
Clerk of Circuit Court  
Marathon County Courthouse  
500 Forest St.  
Wausau, WI 54403

Susan E. Alesia  
Asst. State Public Defender  
P.O. Box 7862  
Madison, WI 53707-7862

Kenneth J. Heimerman  
District Attorney  
Marathon County Courthouse  
500 Forest St.  
Wausau, WI 54403-5554

Gregory M. Weber  
Assistant Attorney General  
P.O. Box 7857  
Madison, WI 53707-7857

Christian L. Devine 227863  
New Lisbon Corr. Inst.  
P.O. Box 4000  
New Lisbon, WI 53950-4000

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

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2014AP2330-CRNM      State of Wisconsin v. Christian L. Devine (L. C. No. 2010CF648)

Before Stark, P.J., Hruz and Seidl, JJ.

Counsel for Christian Devine has filed a no-merit report concluding there is no basis for appealing a sentence imposed after revocation of probation. Devine was advised of his right to respond and has responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude there is no arguable merit to any issue that could be raised on appeal and summarily affirm.

According to the criminal complaint, Devine and his sister went to the victim's home, took the victim out of the house, covered her face and physically forced her into the backseat of

the car. They drove around town and called the victim's boyfriend demanding money. The victim was threatened with violence. Devine pled no contest to taking a hostage as a party to a crime. The circuit court withheld sentence and imposed twenty-five years' probation. Devine's probation was revoked for delivery of heroin and consumption of Adderall without a prescription. He was sentenced after revocation to eighteen years' initial confinement and fifteen years' extended supervision.

Because this appeal arises from sentencing after revocation, Devine is barred from challenging the underlying conviction or raising issues that relate to the underlying conviction. *See State v. Tobey*, 200 Wis. 2d 781, 784, 548 N.W.2d 95 (Ct. App. 1996). Further, revocation is independent from the underlying criminal action. *See State ex rel. Flowers v. DHSS*, 81 Wis. 2d 376, 384, 260 N.W.2d 727 (1978). This court's review is therefore limited to whether the circuit court properly exercised its sentencing discretion.

The record discloses no arguable basis for challenging the circuit court's sentencing discretion. The court considered the proper factors, including Devine's character, the seriousness of the offense, and the need to protect the public. *See State v. Harris*, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). The court noted Devine's massive criminal record, including twenty-one convictions, thirty-three charged offenses that were dismissed and read in, and failures on probation, stretching from Lincoln Hills to adult prison. The court appropriately characterized the hostage taking as a "grave offense." The court stated:

So, you're a 37-year-old male with a criminal record, no family support, a history of criminal conduct that involves both battery, hostage taking, resisting officers, escape, criminal damage to property, and you've had the opportunity this last time to stay in the community, and you walked away from treatment, engaged in activity that got you revoked.

The court invoked a sentence that “will protect the community, give you a chance to get some of that rehabilitation, that when you are released from prison, that you will not be a danger to others who are in the community.” The court’s sentence was much less than the maximum allowable by law and therefore presumptively neither harsh nor excessive. *See State v. Grindemann*, 2002 WI App 106, ¶¶29-33, 255 Wis. 2d 632, 648 N.W.2d 507.

We note the court briefly mentioned the COMPAS risk assessment at sentencing. The record shows it was not “determinative” of the sentence imposed after revocation. *See State v. Loomis*, 2016 WI 68, ¶¶98-99, \_\_\_ Wis. 2d \_\_\_, 881 N.W.2d 749. Any challenge to the sentence based on the court’s reference to COMPAS would thus lack arguable merit.

Devine’s response challenges aspects of the presentence investigation report, but the record demonstrates Devine was present in court when the circuit court specifically asked whether there were any corrections to the presentence investigation report and his counsel identified only two corrections to the PSI. Therefore, Devine relinquished or abandoned the right to make any other corrections to the PSI. *See State v. Ndina*, 2009 WI 21, ¶29, 315 Wis. 2d 653, 761 N.W.2d 612. Our independent review of the record discloses no other issues of arguable merit.

Therefore,

IT IS ORDERED that the judgment is summarily affirmed. WIS. STAT. RULE 809.21 (2013-14).

IT IS FURTHER ORDERED that attorney Susan Alesia is relieved of further representing Devine in this matter. *See* WIS. STAT. RULE 809.32(3) (2013-14).

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