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**DISTRICT II**

August 30, 2017

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

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2016AP1208-CRNM      State of Wisconsin v. Jeffrey J. Czerniak (L.C. # 2012CF461)

Before Neubauer, C.J., Gundrum and Hagedorn, JJ.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Jeffrey J. Czerniak appeals from a judgment imposing sentence after the revocation of his probation. Czerniak's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2015-16)<sup>1</sup> and *Anders v. California*, 386 U.S. 738 (1967), addressing whether the circuit

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

court appropriately exercised its discretion in imposing sentence. Czerniak received a copy of the report and elected not to file a response. Upon consideration of the report and an independent review of the record, we conclude that the judgment may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

In 2013, following a conviction for one count of burglary, the circuit court withheld sentence and ordered a three-year term of probation. On June 18, 2015, following the revocation of his probation, Czerniak appeared in front of the same circuit court judge for sentencing. The circuit court imposed a nine-year bifurcated sentence, with forty-eight months of initial confinement and sixty months of extended supervision. The court ordered Czerniak eligible for the Challenge Incarceration Program and the Substance Abuse Program after he served thirty-six months of initial confinement. The court awarded 253 days of sentence credit pursuant to WIS. STAT. § 973.155.

With regard to the court's sentence, because this matter is before us following sentencing after probation revocation, Czerniak's underlying conviction is not before us. *See State v. Drake*, 184 Wis. 2d 396, 399, 515 N.W.2d 923 (Ct. App. 1994). In addition, Czerniak cannot challenge the probation revocation decision. *See State ex rel. Flowers v. H&SS Dept.*, 81 Wis. 2d 376, 384, 260 N.W.2d 727 (1978). Our review is limited to the circuit court's sentencing discretion.

Sentencing after probation revocation is reviewed “on a global basis, treating the latter sentencing as a continuum of the” original sentencing hearing. *See State v. Wegner*, 2000 WI App 231, ¶7, 239 Wis. 2d 96, 619 N.W.2d 289. Thus, at sentencing after probation revocation,

we expect the court will consider many of the same objectives and factors that it is expected to consider at the original sentencing hearing. *See id.*

We agree with appellate counsel's analysis and conclusion that there is no merit to any issue challenging the sentence imposed after revocation. The circuit court considered the seriousness of the offense, the defendant's character, and the need to protect the public. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The court recalled that even though the original offense was serious and occurred while Czerniak was out on bond, probation was ordered to give Czerniak a chance to seek counseling and to try and stay away from drugs. Despite the opportunity afforded, Czerniak was unable to stay out of trouble while on probation, while facing an alternative to revocation (ATR), or while in jail on a hold, and prison was the only appropriate option. The circuit court's sentence was a demonstrably proper exercise of discretion with which we will not interfere. *See State v. Gallion*, 2004 WI 42, ¶¶17-18, 270 Wis. 2d 535, 678 N.W.2d 197. Further, we cannot conclude that the nine-year sentence when measured against the possible maximum sentence of twelve and one-half years is so excessive or unusual as to shock public sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the judgment and discharges appellate counsel of the obligation to represent Czerniak further in this appeal.

Upon the foregoing reasons,

IT IS ORDERED that the judgment is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Gregory Bates is relieved from further representing Jeffrey J. Czerniak in this appeal. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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