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**DISTRICT III**

October 11, 2017

To:

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

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2016AP1979-CRNM      State of Wisconsin v. Darryl J. Barber (L. C. No. 2015CF145)

Before Stark, P.J., Hruz and Seidl, 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).**

Counsel for Darryl Barber has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2015-16),<sup>1</sup> concluding there is no basis for challenging the sentence imposed after revocation of Barber's probation. Barber was informed of his right to respond to the report and

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

has not 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. Therefore, we summarily affirm the judgment of conviction. See WIS. STAT. RULE 809.21.

In November 2015, Barber pleaded no contest to one count of failing to update information required for his sex offender registration, contrary to WIS. STAT. § 301.45(4)(a). The circuit court withheld sentence and placed Barber on three years' probation. Barber's probation was later revoked and, out of a maximum possible six-year sentence, the court imposed three years, consisting of eighteen months' initial confinement and eighteen months' extended supervision.

An appeal from a judgment imposing sentence after probation revocation does not bring the underlying conviction before us. See *State v. Drake*, 184 Wis. 2d 396, 399, 515 N.W.2d 923 (Ct. App. 1994). Additionally, the validity of the probation revocation itself is not the subject of this appeal. See *State ex rel. Flowers v. DHSS*, 81 Wis. 2d 376, 384, 260 N.W.2d 727 (1978) (probation revocation independent from underlying criminal action); see also *State ex rel. Johnson v. Cady*, 50 Wis. 2d 540, 550, 185 N.W.2d 306 (1971) (judicial review of probation revocation is by petition for certiorari in circuit court). This court's review is therefore limited to whether the circuit court properly exercised its sentencing discretion.

There is no arguable merit to a claim that the circuit court improperly exercised its sentencing discretion. Before imposing a sentence authorized by law, the court considered the seriousness of the offense; Barber's character; the need to protect the public; and the mitigating circumstances Barber raised. See *State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678

N.W.2d 197. It cannot reasonably be argued that Barber's sentence is so excessive as to shock public sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Our independent review of the record discloses no other potential issues for appeal.

Therefore,

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

IT IS FURTHER ORDERED that attorney Andrew R. Hinkel is relieved of further representing Barber in this matter. *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*