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**DISTRICT II**

October 25, 2017

To:

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Fond du Lac County Courthouse  
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You are hereby notified that the Court has entered the following opinion and order:

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2016AP1821-CRNM      State of Wisconsin v. Thomas E. Bartow, Jr. (L.C. # 2010CF386)

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).**

Thomas E. Bartow, Jr., appeals from a judgment imposing sentence after the revocation of his probation. Bartow'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

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

circuit court appropriately exercised its discretion in imposing sentence. Bartow 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 2012, following Bartow's no contest pleas to two counts of burglary, the circuit court withheld sentence and ordered a three-year term of probation on both counts. On October 30, 2014, following the revocation of his probation, Bartow appeared in front of the same circuit court judge for sentencing. On each count, the circuit court imposed eighteen months of initial confinement followed by three years of extended supervision, consecutive, for a total bifurcated sentence of nine years. The court found Bartow eligible for the Substance Abuse Program but not eligible for the Challenge Incarceration Program, and awarded 239 days of sentence credit pursuant to WIS. STAT. § 973.155. On April 11, 2016, we reinstated Bartow's direct appeal rights from the judgment entered upon his postrevocation sentencing. This no-merit appeal follows.

With regard to the court's sentence, because this matter is before us following sentencing after probation revocation, Bartow's underlying conviction is not before us. *See State v. Drake*, 184 Wis. 2d 396, 399, 515 N.W.2d 923 (Ct. App. 1994). 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 offenses, 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. Determining that Bartow's crimes of conviction were not "the most serious burglaries," the court considered offense severity to be a mitigating factor. The court characterized Bartow's character as "not good ... because of the number of prior convictions, the previous jail terms served, prior probations successful and unsuccessful, not making any payments here on probation, and being revoked for serious violations." As to protecting the public, the circuit court focused on Bartow's substance abuse and mental health issues and stated that confinement was appropriate to help Bartow stay off of drugs and alcohol and "to break this cycle of not making progress." The court stated it needed to fashion a sentence that was long enough to account for Bartow's age and long history of adjustment problems and which would provide sufficient oversight after his release. 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 twenty-nine years<sup>2</sup> 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).

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<sup>2</sup> Because Bartow was convicted as a repeater, he faced an enhanced sentence of fourteen and one-half years on each count.

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 Bartow 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 Catherine Malchow is relieved from further representing Thomas E. Bartow, Jr., 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*