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**DISTRICT IV**

June 27, 2018

To:

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Fox Lake, WI 53933-0200

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

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2017AP258-CRNM      State of Wisconsin v. Leroy G. Stalker (L.C. # 2014CF339)

Before Sherman, Blanchard, and Kloppenburg, 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).**

Leroy G. Stalker appeals a judgment imposing sentence after the revocation of his probation. His 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, 744 (1967). Counsel provided Stalker with

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

a copy of the report, and both counsel and this court advised him of his right to file a response. Stalker has not responded. Upon consideration of the no-merit report and our 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.

Stalker pled no contest to one count of stalking, with a previous conviction within seven years, a Class H felony contrary to WIS. STAT. § 940.32(2m)(b). The court withheld sentence and ordered a three-year term of probation. Stalker's probation was revoked and he was returned to court for sentencing. At his post-revocation sentencing, the court imposed a five-year bifurcated sentence, with two-and-one-half years each of initial confinement and extended supervision. The court found Stalker ineligible for both the Challenge Incarceration Program and the Substance Abuse Program. The court ordered 296 days of presentence credit pursuant to WIS. STAT. § 973.155.

Because this matter is before us following sentencing after probation revocation, Stalker's underlying conviction is not before us.<sup>2</sup> *See State v. Drake*, 184 Wis. 2d 396, 399, 515 N.W.2d 923 (Ct. App. 1994). In addition, Stalker cannot challenge the probation revocation decision. *See State ex rel. Flowers v. DHSS*, 81 Wis. 2d 376, 384, 260 N.W.2d 727 (1978). Our review is limited to the circuit court's post-revocation sentence.

The no-merit report addresses whether the sentence is within the legal maximum and whether the circuit court properly exercised its discretion at sentencing. The standards for

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<sup>2</sup> We observe that appellate counsel's no-merit report discusses the propriety of Stalker's plea and concludes there is no arguably meritorious plea-withdrawal claim. Because the validity of Stalker's conviction is beyond the scope of this appeal, we do not further discuss his no-contest plea or conviction.

sentencing issues are well established and need not be repeated here. *See State v. Gallion*, 2004 WI 42, ¶¶17-51, 270 Wis.2d 535, 678 N.W.2d 197. In this case, the court considered appropriate factors, did not consider improper factors, and reached a reasonable explainable result. There is no arguable merit to a challenge to the sentencing court's exercise of discretion.

Our review of the record discloses no other potential issue for appeal. Therefore,

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

IT IS FURTHER ORDERED that Attorney Matthew A. Lynch is relieved from further representing Leroy G. Stalker in this appeal pursuant to WIS. STAT. RULE 809.32(3).

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

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*