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**DISTRICT II**

March 6, 2019

To:

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

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2018AP617-CRNM      State of Wisconsin v. Jullian K. Shallowhorn (L.C. #2016CF119)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

**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).**

Jullian Shallowhorn appeals from a judgment sentencing him after revocation of his probation for possession of tetrahydrocannabinols as a second offense contrary to WIS. STAT. § 961.41(3g)(e) (2015-16). Shallowhorn's appellate counsel filed a no-merit report pursuant to

WIS. STAT. RULE 809.32 (2017-18)<sup>1</sup> and *Anders v. California*, 386 U.S. 738 (1967). Shallowhorn received a copy of the report and was advised of his right to file a response. He has not done so. Upon consideration of the report and an independent review of the record as mandated by *Anders* and RULE 809.32, we summarily affirm the judgment because there are no issues that would have arguable merit for appeal. WIS. STAT. RULE 809.21.

The no-merit report addresses whether the circuit court misused its discretion in imposing a two and one-half year sentence after revocation of Shallowhorn's probation for possession of tetrahydrocannabinols.

After reviewing the record, we conclude that counsel's no-merit report properly analyzes the sentencing after revocation.<sup>2</sup> The circuit court's duty at sentencing after probation revocation was the same as its duty at the original sentencing. *State v. Wegner*, 2000 WI App 231, ¶7 n.1, 239 Wis. 2d 96, 619 N.W.2d 289. In fashioning the sentence after revocation, the court considered the severity of the offense, Shallowhorn's character and history of other offenses, his failure on probation, and the need to protect the public. See *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The weight to be given the various factors was within the circuit court's discretion. *State v. Stenzel*, 2004 WI App 181, ¶16, 276 Wis. 2d 224, 688 N.W.2d 20. The discretion of the sentencing judge was exercised on a "rational and explainable basis."

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

<sup>2</sup> Any challenge to the underlying conviction for possession of tetrahydrocannabinols is outside the scope of this appeal. *State ex rel. Marth v. Smith*, 224 Wis. 2d 578, 582 n.5, 592 N.W.2d 307 (Ct. App. 1999). In addition, review of probation revocation is by way of certiorari review to the court of conviction. *Id.* at 583.

*State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (citation omitted). There would be no arguable merit to a challenge to the sentence.

Our independent review of the record does not disclose any potentially meritorious issue for appeal. Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report, affirm the judgment and relieve Attorney Jorge Fragoso of further representation of Jullian Shallowhorn in this matter.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Jorge Fragoso is relieved of further representation of Jullian Shallowhorn in this matter.

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*