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**DISTRICT III**

April 16, 2019

To:

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

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2018AP329-CRNM      State of Wisconsin v. Douglas B. Baker (L. C. No. 2013CF200)

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 Douglas Baker has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2017-18),<sup>1</sup> concluding there is no basis for challenging the sentence imposed after

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

revocation of Baker's probation.<sup>2</sup> Baker has filed a response challenging the length of the sentence imposed as "harsh." 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.

On January 13, 2015, Baker pleaded no contest to one count of operating a motor vehicle while intoxicated, as a fifth offense.<sup>3</sup> The circuit court withheld sentence and placed Baker on probation for two years. Baker's probation was later revoked, and the court ultimately imposed the maximum possible six-year sentence, consisting of three years' initial confinement and three years' 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 is 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 issues arising from the sentencing after Baker's probation revocation.

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<sup>2</sup> The no-merit report was filed by attorney Tristan S. Breedlove, who has been replaced by attorney Susan E. Alesia as Baker's appellate counsel.

<sup>3</sup> At the same hearing, Baker also pleaded no contest to a felony bail jumping charge arising from Sawyer County Circuit Court case No. 2014CF14. That case is not before us in this no-merit appeal.

The no-merit report addresses whether the circuit court properly exercised its discretion when imposing the sentence after revocation. Upon reviewing the record, we agree with counsel’s description, analysis, and conclusion that any challenge to Baker’s sentence after revocation, including its length, would lack arguable merit. Baker’s response does nothing to change our conclusion. In imposing the maximum sentence authorized by law, the court considered the seriousness of the offense, the need to protect the public from Baker’s “unremittent criminal behavior,” and Baker’s character, including his criminal history and past failures on probation. See *State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. It cannot reasonably be argued that Baker’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 Susan E. Alesia is relieved of further representing Douglas Baker 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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*Sheila T. Reiff*  
*Clerk of Court of Appeals*