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**DISTRICT III**

November 5, 2019

To:

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Outagamie County Courthouse  
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Stephen L. Crowe, Jr.  
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You are hereby notified that the Court has entered the following opinion and order:

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2017AP1239-CRNM      State of Wisconsin v. Stephen L. Crowe, Jr.  
(L. C. No. 2014CM1263)

Before Hruz, J.<sup>1</sup>

**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).**

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2017-18). All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

Counsel for Stephen Crowe, Jr., has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 concluding there is no basis for challenging the judgment imposing a modified sentence after the revocation of Crowe's probation. Crowe was advised of his right to file a response, but he has not responded. Upon an independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), this court concludes there is no arguable merit to any issue that could be raised on appeal. Therefore, the judgment is summarily affirmed. *See* WIS. STAT. RULE 809.21.

On September 21, 2015, a jury found Crowe guilty of violating a temporary restraining order as an act of domestic abuse and as a repeater. The circuit court withheld sentence and placed Crowe on probation for two years, with 120 days in jail as a condition of probation. The court granted Crowe's motion to stay the conditional jail time pending appeal. Crowe, by his original postconviction counsel, filed a motion for resentencing asserting he was sentenced on the basis of inaccurate information.

Before Crowe's postconviction motion could be heard, his probation was revoked. Crowe returned to the circuit court for sentencing on the same day that his postconviction motion was scheduled to be heard. At Crowe's request, the court first proceeded with the sentencing after revocation. The court imposed the maximum possible two-year sentence, consisting of one year of initial confinement and one year of extended supervision. Due to the sentencing after revocation, the court determined that Crowe's earlier motion for resentencing was moot. Crowe also voluntarily dismissed the resentencing motion based on his plan to pursue relief from the sentence imposed after revocation.

Crowe subsequently moved to modify the sentence after revocation, based on the alleged existence of a new factor related to a prior attempt by the Department of Corrections to revoke Crowe's probation. Crowe sought to modify his sentence to twelve months' imprisonment in the county jail and, alternatively, he sought to modify the term of extended supervision from twelve months to six months. After a hearing, the circuit court granted Crowe's alternative request to reduce the term of extended supervision to six months.

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 modified sentence imposed after Crowe's probation revocation.

Any challenge to the modified sentence would lack arguable merit. The circuit court granted Crowe's alternative request to modify the sentence, and Crowe is estopped from challenging a sentence he requested. See *State v. Magnuson*, 220 Wis. 2d 468, 471, 583 N.W.2d 843 (Ct. App. 1998). Moreover, upon reviewing the record, we agree with counsel's description, analysis, and conclusion that any challenge to the modified sentence would lack arguable merit. An 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 attorneys Jeremy A. Newman and Kathilynne Grotelueschen are relieved of further representing Crowe 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*