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**DISTRICT IV**

January 15, 2020

To:

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

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2018AP2118-CRNM      State of Wisconsin v. Liandry Alfonso Palaez (L.C. # 2016CF464)

Before Fitzpatrick, P.J., Kloppenburg and Graham, 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).**

Attorney Vicki Zick, appointed counsel for appellant Liandry Alfonso Palaez, has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit report addresses whether there would be arguable merit to a challenge to the sentence Alfonso Palaez received after revocation of his probation. Alfonso Palaez was sent a copy of the report, but has not filed a response.

Upon our independent review of the entire record, as well as the no-merit report and supplemental no-merit report, we agree with counsel's assessment that there are no arguably meritorious appellate issues. We affirm.

In November 2017, Alfonso Palaez pled no contest to attempted misappropriation of identification, as a party to a crime, and bail jumping. The circuit court withheld sentence and imposed probation. Alfonso Palaez's probation was later revoked, and he was sentenced after revocation on April 27, 2018. The court imposed a one-year jail sentence consecutive to a jail sentence Alfonso Palaez had already received in a Brown County probation revocation case.

The appeal in this case from the sentence following 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 before us in this appeal. *See State ex rel. Flowers v. DHSS*, 81 Wis. 2d 376, 384, 260 N.W.2d 727 (1978) (probation revocation 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). The only potential appellate issues at this point in the proceedings relate to Alfonso Palaez's sentencing following revocation.

Our review of a sentence determination begins "with the presumption that the [circuit] court acted reasonably, and the defendant must show some unreasonable or unjustifiable basis in the record for the sentence complained of." *State v. Krueger*, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). A circuit court's duty at sentencing after revocation is the same as its duty at an original sentencing. *See State v. Wegner*, 2000 WI App 231, ¶7 n.1, 239 Wis. 2d 96, 619 N.W.2d 289. Here, the court explained that it considered facts pertinent to the

standard sentencing factors and objectives, including the seriousness of the offenses, Alfonso Palaez's character, and the need to protect the public. *See State v. Gallion*, 2004 WI 42, ¶¶ 39-46 & 43 n.11, 270 Wis. 2d 535, 678 N.W.2d 197. The sentence was well within the maximum Alfonso Palaez faced, and therefore was not so excessive or unduly harsh as to shock the conscience. *See State v. Grindemann*, 2002 WI App 106, ¶31, 255 Wis. 2d 632, 648 N.W.2d 507. We discern no other basis to challenge the sentence imposed by the circuit court.

By prior order, this court questioned whether there would be arguable merit to a postconviction motion seeking additional sentence credit. Counsel then filed a supplemental no-merit report concluding that this issue lacks arguable merit. According to the supplemental no-merit report, Alfonso Palaez is no longer in custody. Because Alfonso Palaez received a jail sentence in this case, he was not subject to supervision upon his release. Accordingly, any challenge to the circuit court's calculation of sentence credit is moot. *See State ex rel. Olson v. Litscher*, 2000 WI App 61, ¶3, 233 Wis. 2d 685, 608 N.W.2d 425 ("An issue is moot when its resolution will have no practical effect on the underlying controversy.").

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

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

IT IS FURTHER ORDERED that Attorney Vicki Zick is relieved of any further representation of Liandry Alfonso Palaez 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*