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110 EAST MAIN STREET, SUITE 215  
P.O. BOX 1688  
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880  
TTY: (800) 947-3529  
Facsimile (608) 267-0640  
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**DISTRICT II**

April 14, 2021

To:

Hon. Bruce E. Schroeder  
Circuit Court Judge  
Kenosha County Courthouse  
912 56th St.  
Kenosha, WI 53140

Michael D. Graveley  
District Attorney  
912 56th St.  
Kenosha, WI 53140-3747

Rebecca Matoska-Mentink  
Clerk of Circuit Court  
Kenosha County Courthouse  
912 56th St.  
Kenosha, WI 53140

Criminal Appeals Unit  
Department of Justice  
P.O. Box 7857  
Madison, WI 53707-7857

Chris M. Bailey  
Bailey Law Office, L.L.C.  
4810 S. 76th St., Ste. 209  
Greenfield, WI 53220

Barnell L. Love 644992  
Racine Correctional Inst.  
P.O. Box 900  
Sturtevant, WI 53177-0900

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

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2019AP1608-CRNM	State of Wisconsin v. Barnell L. Love (L.C. #2015CM1011)
2019AP1609-CRNM	State of Wisconsin v. Barnell L. Love (L.C. #2016CM5)
2019AP1610-CRNM	State of Wisconsin v. Barnell L. Love (L.C. #2016CF343)

Before Neubauer, C.J., Gundrum and Davis, JJ.

In these consolidated cases, Barnell L. Love appeals from three judgments of conviction imposing sentence after the revocation of his probation. Love's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20)<sup>1</sup> and *Anders v. California*, 386 U.S. 738 (1967), addressing whether the circuit court appropriately exercised its discretion in imposing sentence. Love has not responded. Upon consideration of the no-merit report and our

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

independent review of the records, we conclude that the judgments 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.

Upon his guilty pleas across three circuit court cases, Love was convicted of obstructing an officer (Class A misdemeanor), possessing a controlled substance (Unclassified misdemeanor), and possessing a narcotic drug (Class I felony), all as a repeater pursuant to WIS. STAT. § 939.62. On July 20, 2016, the court withheld sentence on all three counts and ordered a three-year term of probation.<sup>2</sup> On December 13, 2018, following the revocation of his probation, Love was returned to the court for sentencing on all three counts. On each of the two misdemeanors, the court imposed one year of initial confinement followed by one year of extended supervision. On the felony, the court imposed two years of initial confinement followed by two years of initial confinement. All sentences were ordered to run consecutive to each other, for an aggregate bifurcated sentence totaling eight years, with four years of initial confinement followed by four years of 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.*

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<sup>2</sup> The circuit court ordered a two-year term of probation for both misdemeanors, and a three-year term of probation in connection with the felony. All probationary terms ran concurrent with each other. Love also pled guilty to a fourth count, for which the court imposed a bifurcated prison sentence. Love's probation was ordered to run consecutive to that prison sentence.

*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 limited to issues arising from the sentence imposed after revocation.

Sentencing after probation revocation is reviewed “on a global basis, treating the latter sentencing as a continuum of the” original sentencing hearing. *See State v. Wegner*, 2000 WI App 231, ¶7, 239 Wis. 2d 96, 619 N.W.2d 289. The court should consider many of the same objectives and factors it is expected to consider at the original sentencing hearing. *See id.* Where, as here, the same judge presided over the original sentencing and the sentencing after revocation, the judge need not revisit the original sentencing explanation; we consider that reasoning implicitly adopted. *See id.*, ¶9.

Having independently reviewed the record, we agree with appellate counsel’s analysis and conclusion that any challenge to Love’s sentences after probation revocation would lack arguable merit.<sup>3</sup> Prior to imposing sentence, the circuit court reviewed file documents pertaining to the original sentencing (including the presentence investigation report), as well as the revocation summary. The court considered appropriate factors, did not consider inappropriate factors, and reached a reasonable result. Further, we cannot conclude that the bifurcated sentence of eight years, when measured against the possible maximum of eleven and one-half

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<sup>3</sup> Appellate counsel’s no-merit report incorrectly states that Love faced a maximum of “two years and nine months” on the obstructing conviction, and “twenty-five months” on the misdemeanor drug conviction. By statute, Love faced a maximum sentence of two years on each of the misdemeanor convictions. WIS. STAT. § 939.62(1)(a) (“A maximum term of imprisonment of one year or less may be increased to not more than 2 years.”). This error does not alter our conclusion that no issue of arguable merit arises from the sentences imposed after the revocation of Love’s probation. The charging documents and plea paperwork all state the correct penalties, and nothing in the record suggests that the sentencing court misapprehended the well-established statutory maximums.

years, is so excessive or unusual as to shock public sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

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

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

IT IS FURTHER ORDERED that Attorney Chris M. Bailey is relieved from further representing Barnell L. Love in this appeal. *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*