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**DISTRICT IV**

November 4, 2021

To:

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David R. Karpe  
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Shaun A. Welch 556370  
Kettle Moraine Correctional Inst.  
P.O. Box 282  
Plymouth, WI 53073-0282

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

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2019AP2141-CRNM      State of Wisconsin v. Shaun A. Welch (L.C. # 2009CF634)

Before Kloppenburg, Graham, and Nashold, 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 David Karpe, appointed counsel for appellant Shaun Welch, has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2019-20)<sup>1</sup> 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 imposed by the circuit court. Welch was sent a copy of the report, but has not filed a response. Upon our independent review of the entire

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

record, as well as the no-merit report, we agree with counsel's assessment that there are no arguably meritorious appellate issues.

Welch was sentenced after revocation of probation in this case on March 6, 2015. The circuit court imposed a sentence of seven years of initial confinement and eight years of extended supervision.

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 postconviction or appellate issues at this point in the proceedings relate to sentencing following revocation.

Our review of a sentence determination begins “with the presumption that the trial court acted reasonably, and the defendant must show some unreasonable or unjustifiable basis in the record for the sentence complained of.”<sup>2</sup> *State v. Krueger*, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). Here, the court explained that it considered facts pertinent to the standard sentencing factors and objectives, including the protection of the public, the gravity of the offense, and the rehabilitative needs of the defendant. See *State v. Gallion*, 2004 WI 42,

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<sup>2</sup> 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.

¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. The sentence was within the maximum Welch faced and, given the facts of this case, there would be no arguable merit to a claim that the sentence was unduly harsh or excessive. See *State v. Stenzel*, 2004 WI App 181, ¶21, 276 Wis. 2d 224, 688 N.W.2d 20 (a sentence is unduly harsh or excessive “only where the sentence is so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances” (quoted source omitted)). The court granted Welch 640 days of sentence credit, on counsel’s stipulation.

Upon our independent review of the record, we have found no other arguable basis to disturb the sentence imposed following revocation. 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 David Karpe is relieved of any further representation of Shaun Welch 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*