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**DISTRICT IV**

March 17, 2022

To:

Hon. Todd L. Ziegler  
Circuit Court Judge  
Electronic Notice

Kevin D. Croninger  
Electronic Notice

Shirley Chapiewsky  
Clerk of Circuit Court  
Monroe County Courthouse  
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Patricia Sommer  
Electronic Notice

Troy R. Gray  
423 W. Council St.  
Tomah, WI 54660

Winn S. Collins  
Electronic Notice

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

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|----------------|---|
| 2021AP873-CRNM | State of Wisconsin v. Troy R. Gray (L.C. # 2019CF54)  |
| 2021AP874-CRNM | State of Wisconsin v. Troy R. Gray (L.C. # 2019CF95)  |
| 2021AP875-CRNM | State of Wisconsin v. Troy R. Gray (L.C. # 2019CF221) |

Before Blanchard, 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 Patricia Sommer, appointed counsel for appellant Troy Gray, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20)<sup>1</sup> in three consolidated cases. Gray was provided a copy of the report, but has not filed a response. Upon our independent review of the records as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude that there is

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

no arguable merit to any issue that could be raised in further proceedings. We therefore summarily affirm the judgments of conviction in these consolidated appeals.

In Monroe County Circuit Court Case No. 2019CF54, Gray pled no-contest to stalking. The circuit court entered a judgment of conviction, withheld sentence, and imposed probation. In Monroe County Circuit Court Case No. 2019CF95, Gray pled no-contest to felony bail jumping. Again, the court entered a judgment of conviction, withheld sentence, and imposed probation. The State subsequently charged Gray in Monroe County Circuit Court Case No. 2019CF221 with multiple offenses stemming from Gray's alleged continued contacts with the victims and an additional alleged victim in the prior two cases. Gray's probation in the two prior cases was revoked. Pursuant to a plea agreement in the third case, Gray pled no-contest to an amended charge of threats to injure or accuse of a crime, as domestic abuse, the remaining charges were dismissed and read-in for sentencing purposes, and the State agreed to limit its sentencing recommendation to the recommendation in the presentence investigation report. The circuit court held a combined sentencing hearing for the sentencing after revocation in Case Nos. 2019CF54 and 2019CF95 and the original sentencing in Case No. 2019CF221. The court sentenced Gray to a total of two years of initial confinement and one year of extended supervision in the revocation cases, Case Nos. 2019CF54 and 2019CF95. The court imposed and stayed a sentence of two years of initial confinement and two years of extended supervision, and imposed three years of probation, in Case No. 2019CF221.

Because Gray's appeals in Case Nos. 2019CF54 and 2019CF95 arise from judgments imposing sentences after Gray's probation was revoked, Gray is barred from raising issues in those appeals that relate to the underlying convictions. *See State v. Tobey*, 200 Wis. 2d 781,

784, 548 N.W.2d 95 (Ct. App. 1996). Further, probation revocation is independent from the underlying criminal action. *See State ex rel. Flowers v. DHSS*, 81 Wis. 2d 376, 384, 260 N.W.2d 727 (1978). This court’s review in Case Nos. 2019CF54 and 2019CF95 is therefore limited to issues arising from the sentencings after revocation.

We agree with counsel’s assessment that there would be no arguable merit to a challenge to the sentences imposed in any of the three cases. 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.”<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 Gray’s rehabilitative needs, the need to protect the public, and the gravity of the offenses. *See State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. The sentences were within the maximum Gray faced and, given the facts of these cases, there would be no arguable merit to a claim that the sentences were 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)).

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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.

We also agree with counsel that a challenge to Gray's plea in Case No. 2019CF221 would lack arguable merit. A post-sentencing motion for plea withdrawal must establish that plea withdrawal is necessary to correct a manifest injustice, such as a plea that was not knowing, intelligent, and voluntary. *State v. Brown*, 2006 WI 100, ¶18, 293 Wis. 2d 594, 716 N.W.2d 906. Here, the circuit court conducted a plea colloquy that, when considered together with the plea questionnaire that Gray signed, satisfied the court's mandatory duties to personally address Gray and determine information such as Gray's understanding of the nature of the charge and the range of punishments he faced, the constitutional rights he waived by entering a plea, and the direct consequences of the plea. *See State v. Hoppe*, 2009 WI 41, ¶¶18, 30, 317 Wis. 2d 161, 765 N.W.2d 794. There is no indication of any other basis for plea withdrawal. A valid guilty plea constitutes a waiver of all nonjurisdictional defects and defenses. *State v. Kelty*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886.

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

Therefore,

IT IS ORDERED that the judgments are affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Patricia Sommer is relieved of any further representation of Troy Gray in these matters. *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*