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**DISTRICT IV**

July 8, 2022

To:

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Vicki Zick  
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Garrett Christian Jacobsen 524351  
Drug Abuse Corr. Center  
P.O. Box 190  
Winnebago, WI 54985-0190

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

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2021AP389-CRNM	State of Wisconsin v. Garrett Christian Jacobsen (L.C. # 2017CF1726)
2021AP390-CRNM	State of Wisconsin v. Garrett Christian Jacobsen (L.C. # 2018CF32)

Before Kloppenburg, Fitzpatrick, 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 Vicki Zick, appointed counsel for Garrett Jacobsen, has filed no-merit reports in these consolidated appeals. Zick seeks to withdraw as appellate counsel pursuant to WIS. STAT. RULE 809.32 (2019-20)<sup>1</sup> and *Anders v. California*, 386 U.S. 738 (1967). Jacobsen was sent a copy of the reports and has not filed a response. Upon consideration of the reports and an

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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 record, we conclude that there is no arguable merit to any issue that could be raised on appeal. Accordingly, we affirm.

Jacobsen was charged with operating a motor vehicle without the owner's consent, felony bail jumping, and misdemeanor theft in Rock County Circuit Court case No. 2018CF32. In addition, Jacobsen was charged with possession of narcotics as a second and subsequent offense in Rock County Circuit Court case No. 2017CF1726. Jacobsen entered pleas simultaneously in both cases as follows.

In case No. 2018CF32, the parties entered into a plea agreement in which Jacobsen agreed to plead guilty to the charge of operating a motor vehicle without consent and the charge of felony bail jumping. The State agreed that the misdemeanor theft charge would be dismissed and read in. The parties further agreed to recommend a withheld sentence with three years of probation that included multiple conditions, including jail time. The circuit court accepted the parties' plea agreement. It found Jacobsen guilty on the charges of operating a motor vehicle without consent and bail jumping, dismissed the theft charge, withheld sentence, and ordered three years of probation with the stipulated conditions.

In case No. 2017CF1726, the parties entered into a deferred prosecution agreement. The parties agreed that Jacobsen would plead guilty to the drug possession charge and that judgment would be withheld pending Jacobsen's completion of his probation in case No. 2018CF32 and other conditions. If Jacobsen successfully completed his probation and the other conditions, then the State would move to dismiss the drug possession charge; if he did not, then he agreed not to oppose entry of judgment. Consistent with the deferred prosecution agreement, the circuit court accepted Jacobsen's guilty plea to the drug possession charge and withheld entry of judgment.

Jacobsen's probation in case No. 2018CF32 was subsequently revoked. The circuit court held a sentencing hearing and imposed a revocation sentence on the two charges in that case. It sentenced Jacobsen to concurrent terms of three years of initial confinement and three years of extended supervision. The court also imposed sentence and entered judgment in the drug possession case, No. 2017CF1726. In that case, the court sentenced Jacobsen to eighteen months of initial confinement and two years of extended supervision, consecutive to his sentence in case No. 2018CF32.

*Case No. 2018CF32*

Because case No. 2018CF32 is a revocation sentence, our review in that case is limited. An appeal from a revocation sentence 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 revocation itself is not before us. *See State ex rel. Flowers v. DHSS*, 81 Wis. 2d 376, 384, 260 N.W.2d 727 (1978) (probation revocation is independent of underlying criminal action); *see also State ex rel. Johnson v. Cady*, 50 Wis. 2d 540, 550, 185 N.W.2d 306 (1971) (review of probation revocation is by petition for certiorari in circuit court).

Thus, the only potential issues at this point in case No. 2018CF32 are those relating to Jacobsen's revocation sentence. The circuit court's duty at a sentencing after revocation is the same as its duty at the original sentencing. *State v. Wegner*, 2000 WI App 231, ¶7 n.1, 239 Wis. 2d 96, 619 N.W.2d 289.

The no-merit report in case No. 2018CF32 addresses whether the circuit court erred in exercising its sentencing discretion in imposing Jacobsen's revocation sentence. We agree with counsel that there is no arguable merit to this issue. The court considered the required

sentencing factors along with other relevant factors, and the court did not rely on any inappropriate factors. *See State v. Gallion*, 2004 WI 42, ¶¶37-49, 270 Wis. 2d 535, 678 N.W.2d 197. The court imposed the maximum prison term on each of the two charges, but as noted above the court imposed those terms concurrent with one another. Having considered the court's extensive sentencing remarks, we conclude that Jacobsen could not plausibly argue that this sentence was unduly harsh or so excessive as to shock public sentiment under the circumstances. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We see no other basis on which Jacobsen might challenge his sentence in case No. 2018CF32.

*Case No. 2017CF1726*

Turning to case No. 2017CF1276, our review includes consideration of any issues relating to the underlying judgment of conviction. As explained below, we see no issues of arguable merit.

The no-merit report in case No. 2017CF1276 addresses whether Jacobsen's guilty plea to the drug possession charge was knowing, intelligent, and voluntary. We agree with counsel that there is no arguable merit to this issue. The circuit court conducted a thorough plea colloquy that complied with the requirements of WIS. STAT. § 971.08 and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. The court also specifically questioned Jacobsen regarding the deferred prosecution agreement. Jacobsen stated that he discussed the terms of the agreement with his attorney, that he understood the terms, and that he was entering into the agreement freely and voluntarily. We see no arguable ground on which Jacobsen might seek to withdraw his guilty plea to the drug possession charge.

The no-merit report also addresses whether the circuit court erred in exercising its sentencing discretion in case No. 2017CF1276. We agree with counsel that there is no arguable merit to this issue. The court considered the required sentencing factors along with other relevant factors, and the court did not rely on any inappropriate factors. The court imposed a sentence that was well within the maximum, and Jacobsen could not plausibly argue that the sentence was unduly harsh or excessive. We see no other basis on which Jacobsen might challenge his sentence in case No. 2017CF1276.

Our review of the record discloses no other potential issues.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Vicki Zick is relieved of any further representation of Garrett Jacobsen 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*