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**DISTRICT III**

November 22, 2022

To:

Hon. Eugene D. Harrington  
Circuit Court Judge  
Electronic Notice

Jacqueline O. Baasch  
Clerk of Circuit Court  
Burnett County Courthouse  
Electronic Notice

Tristan Breedlove  
Electronic Notice

Winn S. Collins  
Electronic Notice

James Jay Rennie  
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Randy Travis Villanueva 636281  
Jackson Correctional Inst.  
P.O. Box 233  
Black River Falls, WI 54615-0233

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

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2020AP1550-CRNM      State of Wisconsin v. Randy Travis Villanueva  
(L. C. No. 2014CF148)

Before Stark, P.J., Hruz and Gill, 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).**

Randy Villanueva appeals from an amended judgment sentencing him to prison following the revocation of his probation on a conviction for second-degree sexual assault of a child. Attorney Tristan Breedlove has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2019-20);<sup>1</sup> *Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit report addresses the circuit court's exercise of its sentencing discretion.

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

Villanueva was sent a copy of the report, but he has not filed a response. Having independently reviewed the entire record, as well as the no-merit report, we conclude that counsel shall be allowed to withdraw and the judgment of conviction will be summarily affirmed. *See* WIS. STAT. RULE 809.21.

We first note that an appeal from a sentence imposed following the revocation of probation does not bring an underlying conviction before this court. *State v. Drake*, 184 Wis. 2d 396, 399, 515 N.W.2d 923 (Ct. App. 1994). Nor can an appellant challenge the validity of any probation revocation decision in this proceeding. *See State ex rel. Flowers v. DHSS*, 81 Wis. 2d 376, 384, 260 N.W.2d 727 (1978) (probation revocation is independent from the 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 way of certiorari to the court of conviction). The only potential issue for appeal is the circuit court's imposition of sentence 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.” *State v. Krueger*, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). Here, the record shows that Villanueva was afforded the opportunity to comment on the revocation materials and two presentence investigation reports (PSI), to present a character witness, and to personally address the circuit court prior to sentencing. The circuit court considered the standard sentencing factors and explained their application to this case. *See generally State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. Regarding the severity of the offense, the court noted that it involved multiple instances of sexual intercourse with a fourteen-year-old girl, who bore a child as a result. With respect to the

defendant's character and rehabilitative needs, the court emphasized Villanueva's failures on probation, including his failure to complete sex offender treatment, his continued consumption of alcohol and controlled substances, and his commission of a battery. The court concluded that a significant prison term was necessary to protect the public and to not unduly depreciate the seriousness of the offense.

The circuit court then sentenced Villanueva to fifteen years' initial confinement followed by ten years' extended supervision, to be served concurrently with a five-year sentence that Villanueva was serving in another case. The court also awarded 699 days of sentence credit, imposed undisputed costs and conditions of supervision as recommended in the most recent PSI, directed that Villanueva register as a sex offender, and found that he was not eligible for the challenge incarceration or substance abuse programs.

We agree with counsel's analysis and conclusion that any challenge to Villanueva's sentence would lack arguable merit. In particular, the sentence was within the maximum penalty allowed by law, and the record shows no unreasonable basis for it. Our independent review of the record discloses no other potential issues for appeal. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

Accordingly,

IT IS ORDERED that the judgment following revocation is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Tristan Breedlove is relieved of any further representation of Randy Villanueva in this matter pursuant to 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*