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**DISTRICT III**

November 22, 2022

To:

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Circuit Court Judge  
Electronic Notice

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Kelsey Jarecki Morin Loshaw  
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Michael W. Schiek  
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James K. Thurmond 146941  
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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2020AP1887-CRNM      State of Wisconsin v. James K. Thurmond (L. C. No. 2003CF3)

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).**

James Thurmond appeals from an amended judgment sentencing him to prison following the revocation of his probation on three counts of failure to pay child support. Attorney Kathilynne Grotelueschen 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). Attorney Kelsey Loshaw has since replaced Grotelueschen as counsel and has not withdrawn the report.

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

The no-merit report addresses the circuit court's exercise of its sentencing discretion. Thurmond 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 following revocation 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 trial 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, we agree with counsel's analysis and conclusion that any challenge to the sentence would lack arguable merit.

The record shows that Thurmond was afforded the opportunity to comment on the revocation materials and to address the circuit court both personally and by counsel prior to sentencing. The court noted that Thurmond was tens of thousands of dollars in arrears, and that although he had made some efforts to pay, those efforts were insufficient. The court concluded

that the extended supervision of prison sentences would be the best way to ensure that Thurmond continued to make payments.

The circuit court then sentenced Thurmond to consecutive terms of one year of initial confinement followed by one year of extended supervision on each count. The court also awarded 372 days of sentence credit. The sentences did not exceed the maximum available penalties, and the court rationally explained why it imposed them based upon standard sentencing factors. *See generally State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197.

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 Kelsey Loshaw is relieved of any further representation of James Thurmond 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