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**DISTRICT IV**

December 30, 2022

To:

Hon. Ellen K. Berz  
Circuit Court Judge  
Electronic Notice

Carlo Esqueda  
Clerk of Circuit Court  
Dane County Courthouse  
Electronic Notice

Tristan Breedlove  
Electronic Notice

Winn S. Collins  
Electronic Notice

Jacob M. Augustine Clark  
1072 Rogues Way  
Green Bay, WI 54313

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

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2021AP2030-CRNM	State v. Jacob M. Augustine Clark (L.C. #2018CF1977)
2021AP2031-CRNM	State v. Jacob M. Augustine Clark (L.C. #2018CF2378)

Before Blanchard, P.J., 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 Tristan Breedlove has filed a no-merit report seeking to withdraw as appellate counsel for appellant Jacob M. Augustine Clark. *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 any issues arising from the sentence imposed by the circuit court following the revocation of Augustine Clark's probation. Augustine Clark was sent a copy of the report, but has not filed a response. Upon our independent review of the no-merit report and the

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

record, we agree with counsel's assessment that there are no arguably meritorious appellate issues. We summarily affirm. *See* WIS. STAT. RULE 809.21.

In February 2019, Augustine Clark was convicted of two counts of stalking and one count of violating a restraining order. The court withheld sentence and imposed five years of probation. In April 2021, Augustine Clark returned to court for sentencing after his probation was revoked.<sup>2</sup> The court sentenced Augustine Clark to a total of two years of initial confinement and four years of extended supervision. The court awarded Augustine Clark 532 days of sentence credit, on counsel's stipulation.

These appeals are from the sentence imposed following revocation of probation, and therefore do not bring the underlying convictions 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 these appeals. *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 appellate issues at this point in the proceedings relate to sentencing following revocation.

This court's review of a sentence determination begins "with the presumption that the trial court acted reasonably, and the defendant must show some unreasonable or unjustifiable

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<sup>2</sup> Augustine Clark had already completed his probation on the violating a restraining order count. He therefore returned for sentencing after revocation only on the two stalking counts.

basis in the record for the sentence complained of.”<sup>3</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 Augustine Clark’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. 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)). We agree with counsel’s assessment that further proceedings related to the sentence imposed after revocation would be wholly frivolous.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgments. 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 judgments are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Tristan Breedlove is relieved of any further representation of Jacob M. Augustine Clark in this matter. *See* WIS. STAT. RULE 809.32(3).

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<sup>3</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.

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*