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**WISCONSIN COURT OF APPEALS**

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**DISTRICT IV/II**

January 3, 2013

To:

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

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2012AP344-CRNM      State of Wisconsin v. Michael David Brian Waterman  
(L.C. # 2009CF368)

Before Neubauer, P.J., Reilly and Gundrum, JJ.

Michael David Brian Waterman appeals from a judgment sentencing him after revocation of his probation for strangulation and suffocation, contrary to WIS. STAT. § 940.235(1) (2009-10).<sup>1</sup> Waterman's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Waterman received a copy of the report, was advised of his right to file a response, and has elected not to do so. After reviewing the record

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2009-10 version.

and counsel's report, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment. WIS. STAT. RULE 809.21.

The no-merit report addresses whether the circuit court properly exercised its discretion in imposing its sentence after revocation. The circuit court's duty at sentencing after probation 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.

Here, the record reveals that the circuit court's sentencing decision had a "rational and explainable basis." *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197. In imposing its sentence, the court considered the seriousness of the offense, Waterman's character, and the need to protect the public. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Under the circumstances of the case, which were aggravated by Waterman's assault of the same victim while on probation, the sentence of five years and nine months of imprisonment does not "shock public sentiment and violate the judgment of reasonable people concerning what is right and proper." See *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We agree with counsel that a challenge to Waterman's sentence would lack arguable merit.

Our independent review of the record does not disclose any potentially meritorious issue for appeal.<sup>2</sup> Because we conclude that there would be no arguable merit to any issue that could

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<sup>2</sup> Any challenge to the underlying conviction for strangulation and suffocation is outside the scope of this appeal. See *State ex rel. Marth v. Smith*, 224 Wis. 2d 578, 582 n.5, 592 N.W.2d 307 (Ct. App. 1999).

be raised on appeal, we accept the no-merit report and relieve Attorney Eileen A. Hirsch of further representation in this matter.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Eileen A. Hirsch is relieved of further representation of Waterman in this matter.

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*