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**DISTRICT II**

October 19, 2016

To:

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Circuit Court Judge  
Fond du Lac County Courthouse  
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Fond du Lac, WI 54935

Ramona Geib  
Clerk of Circuit Court  
Fond du Lac County Courthouse  
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P.O. Box 200  
Fox Lake, WI 53933-0200

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

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2016AP523-CRNM      State of Wisconsin v. Justin L. Butcher (L.C. # 2014CF434)

Before Neubauer, C.J., Gundrum and Hagedorn, JJ.

Justin L. Butcher appeals from a judgment imposing sentence after the revocation of probation. His appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2013-14)<sup>1</sup> and *Anders v. California*, 386 U.S. 738 (1967). Butcher received a copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the report and an independent review of the record, we conclude that the

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

judgment may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

In 2014, Butcher entered a no-contest plea to two counts of the delivery of heroin and was sentenced to three years' probation. His probation was revoked in June 2015, after he was arrested for driving while under the influence of heroin. Butcher was sentenced to concurrent terms of four years' initial confinement and five years' extended supervision, with 213 days of sentence credit. The sentence was made consecutive to any other sentence. Butcher was also made eligible for the Challenge Incarceration Program and Substance Abuse Program.

This appeal brings before the court only the sentence imposed after revocation. *See State v. Scaccio*, 2000 WI App 265, ¶10, 240 Wis. 2d 95, 622 N.W.2d 449. The only possible issue for appeal is whether the sentence was an erroneous exercise of discretion or excessive.

We agree with the no-merit analysis that the sentencing court properly exercised its discretion. The sentencing court considered Butcher's crimes to be serious in perpetuating drug use in the community. It sought to protect the community, punish Butcher, and establish a long period of extended supervision to help Butcher's rehabilitation. The sentence was based on consideration of appropriate factors and sentencing objectives. *See State v. Gallion*, 2004 WI 42, ¶¶40-41, 270 Wis. 2d 535, 678 N.W.2d 197. The nine year sentences are one year below the ten year maximum. They do not violate the judgment of reasonable people concerning what is right and proper under the circumstances and cannot be deemed excessive. *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

This court accepts the no-merit report, affirms the judgment, and discharges appellate counsel of the obligation to represent Butcher further in this appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Eric R. Pangburn is relieved from further representing Justin L. Butcher in this appeal. *See* WIS. STAT. RULE 809.32(3).

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