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**DISTRICT IV**

February 6, 2025

To:

Hon. Guy D. Dutcher  
Circuit Court Judge  
Electronic Notice

Katrina Rasmussen  
Clerk of Circuit Court  
Waushara County Courthouse  
Electronic Notice

Kirk D. Henley  
Electronic Notice

Jennifer L. Vandermeuse  
Electronic Notice

Jeffrey C. House Jr. 452248  
New Lisbon Correctional Inst.  
P.O. Box 2000  
New Lisbon, WI 53950-2000

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

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2023AP2113-CRNM      State of Wisconsin v. Jeffrey C. House, Jr. (L.C. # 2017CF10)

Before Kloppenburg, P.J., Blanchard, and Graham, 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).**

Jeffrey C. House, Jr., appeals a judgment imposing sentence after the revocation of his probation. Attorney Kirk Henley has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32; *Anders v. California*, 386 U.S. 738, 744 (1967).<sup>1</sup> House was sent a copy of the no-merit report, and he filed a response. Upon review of the record, as well as the no-merit report and response, this court concludes that there are no arguably meritorious appellate issues.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

In 2017, House pled no contest to count one, first degree reckless injury, and count two, felony intimidation of a victim, and a third count was dismissed and read in. *See* WIS. STAT. §§ 940.23(1)(a) and 940.45(3). On count one, the circuit court sentenced House to three years of initial confinement and seven years of extended supervision. On count two, the court withheld sentence and imposed five years of probation, concurrent to the sentence on count one. House's probation was revoked in 2022, and he returned to court for sentencing after revocation on count two. The court sentenced House to five years of initial confinement followed by five years of extended supervision, to be served consecutive to any other sentence he was serving.

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). The only potential issue for appeal is the circuit court's imposition of sentence following revocation.

We agree with appellate counsel's analysis and conclusion that there is no merit to any issue challenging the sentence imposed after revocation. The record shows that House was afforded the opportunity to comment on the revocation materials and to address the circuit court before sentencing. The court considered the standard sentencing factors and explained how the court was applying the factors. *See generally State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197.

Regarding the nature of the offense, felony intimidation of a victim, the circuit court said that the victim in this instance was House's minor son, who was eleven years old at the time of the offense. The court said that House beat his son's mother "within an inch of her life," that his

son had seen and heard everything, and that House threatened his son “not to talk to the authorities” and “not to report what happened.” With respect to House’s character, the court discussed his criminal history and history of substance abuse. The court said that House engaged in “horrifically violent behavior when under the influence.” At the same time, the court gave House “credit for accepting responsibility” for what he did and acknowledging the people affected by his actions.

The circuit court concluded that probation was not appropriate and that a prison term was necessary, given the magnitude of the offense. The sentence imposed was within the applicable penalty range. Therefore, it cannot reasonably be argued that the sentence was so excessive or unusual as to shock public sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We agree with counsel that there would be no arguable merit to challenging the court’s exercise of its sentencing discretion. We further agree with counsel’s conclusion in the no-merit report that there would be no arguable merit to a claim that House was denied his right to be sentenced by an impartial judge. The record does not contain any objective facts or appearance of bias that would support such a claim.

In the no-merit response, House asserts that he had a prescription for OxyContin for a tooth infection in 2022 and was under the influence of OxyContin at the time he committed the conduct that led to the revocation of his probation. House argues that the OxyContin prescription is a new factor that warrants modification of his sentencing following revocation. A defendant seeking sentence modification based on a new factor must make a threshold showing, “by clear and convincing evidence[,] the existence of a new factor.” *State v. Harbor*, 2011 WI 28, ¶36, 333 Wis. 2d 53, 797 N.W.2d 828. A new factor is defined as a fact or a set of facts that is “highly relevant to the imposition of sentence, but not known to the [circuit court] at the time

of original sentencing, either because it was not then in existence or because, even though it was then in existence, it was unknowingly overlooked by all of the parties.”” *Id.* ¶40 (quoted source omitted).

Assuming the truth of House’s representations for purposes of this review, his account regarding his prescription for and use of OxyContin could not qualify as a new factor. First, House’s representation that he used OxyContin in 2022 is not highly relevant to the imposition of his sentence for felony intimidation of a victim. The conduct that led to House’s conviction for felony intimidation of a victim occurred in January 2017. House does not assert that he was prescribed or was using OxyContin in January 2017. Second, House cannot show that his purported use of OxyContin was unknown to the circuit court. House’s sentencing following revocation occurred on December 7, 2022. At the December 7, 2022 hearing, House told the court during his allocution that, around the same time he committed the conduct that led to the revocation of his probation, he had been prescribed and had taken OxyContin for a toothache, at a time when he was also drinking alcohol. House said that the OxyContin, mixed with alcohol, “really off-kiltered things” for him. Because House cannot show either that his alleged mixing of OxyContin and alcohol was highly relevant to the imposition of his sentence or that it was unknown to the circuit court at the time he was sentenced following revocation, his argument for sentence modification based on a new factor is without merit.

The no-merit report also discusses whether there would be arguable merit to a claim of ineffective assistance of counsel. To establish ineffective assistance of counsel, House would have to show that counsel’s performance fell below an objective standard of reasonableness and that House was prejudiced as a result. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984). In reviewing trial counsel’s performance, “every effort is made to avoid determinations of

ineffectiveness based on hindsight ... and the burden is placed on the defendant to overcome a strong presumption that counsel acted reasonably within professional norms.” *State v. Johnson*, 153 Wis. 2d 121, 127, 449 N.W.2d 845 (1990). This court’s review of the record, the no-merit report, and the response discloses no arguably meritorious basis for challenging trial counsel’s performance.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment. *See State v. Allen*, 2010 WI 89, ¶¶81-82, 328 Wis. 2d 1, 786 N.W.2d 124. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Henley is relieved of any further representation of House 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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*Samuel A. Christensen*  
*Clerk of Court of Appeals*