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DISTRICT I

January 31, 2024

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Circuit Court Judge
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Circuit Court Judge
Electronic Notice

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

2021AP2134-CRNM State of Wisconsin v. Shawn D. Reed (L.C. # 2018CF5762)

Before White, C.J., Donald, P.J., and Geenen, J.

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 Angela Dawn Chodak, appointed counsel for Shawn Reed, has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2021-22);¹

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

Anders v. California, 386 U.S. 738, 744 (1967). By prior order, this court identified a potentially non-frivolous issue in this no-merit appeal related to sentence credit. This court's order also noted that the no-merit report was insufficient because it was limited to a discussion of the order denying the postconviction motion. This court directed counsel to file a response addressing the sentence credit issue we identified, as well as Reed's plea and sentencing. The order also explained that, if counsel identified any issue of arguable merit, counsel could instead file a notice voluntarily dismissing the no-merit appeal and a motion to extend the deadline to file a postconviction motion.

Counsel has now filed a "Notice Of Voluntary Dismissal Of No Merit Report And No Merit Notice Of Appeal; Motion To Reinstate Deadlines And Motion To Withdraw As Counsel." Counsel explains that she has determined that there is merit to the sentence credit issue identified by this court. Counsel also states that she has discussed the matter with Reed, and that Reed has asked counsel to withdraw. Counsel asks that we dismiss this no-merit appeal, extend Reed's appellate deadlines, and allow counsel to withdraw as Reed's counsel in further proceedings.

Separately, Reed has moved this court to extend his appellate deadlines, and to dismiss his appointed counsel and for new counsel to be appointed for him.

Because appointed counsel has determined that there is at least one issue of arguable merit that may be pursued in postconviction proceedings, we now dismiss this no-merit appeal. *See McCoy v. Court of Appeals of Wis.*, 486 U.S. 429, 437 (1988) (a no-merit proceeding is appropriate only if counsel is convinced that an appeal would be wholly frivolous). We also extend Reed's postconviction deadlines. We emphasize that nothing in this opinion is intended to suggest that we have determined that the sentence credit issue we identified is the only

potentially nonfrivolous issue in this matter. Rather, we determine only that this no-merit appeal must be dismissed because there is at least one nonfrivolous issue to pursue.

Finally, counsel's motion to withdraw is denied. Reed's filings in this court state his desire to be represented by counsel in further proceedings. As to Reed's request that successor counsel be appointed, that request is properly directed to the Office of the State Public Defender (SPD). The SPD, not this court, makes decisions as to the appointment of counsel in criminal cases.

Therefore,

IT IS ORDERED that the no-merit report is rejected and the no-merit appeal is dismissed without prejudice.

IT IS FURTHER ORDERED that the time to file a postconviction motion or notice of appeal is extended to sixty days from the date of this order.

IT IS FURTHER ORDERED that counsel's motion to withdraw is denied.

IT IS FURTHER ORDERED that this matter is referred to the Office of the State Public Defender for the possible appointment of new counsel. If the SPD determines that it should appoint new counsel, any such appointment is to be made within thirty days of the date of this order.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals