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DISTRICT II

February 7, 2024

To:

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Circuit Court Judge
Electronic Notice

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Leonard D. Kachinsky
Electronic Notice

Paul A. Turner, #619822
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You are hereby notified that the Court has entered the following opinion and order:

2021AP1977-CRNM State of Wisconsin v. Paul A. Turner (L.C. #2018CF727)

Before Gundrum, P.J., Grogan and Lazar, 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).

Paul A. Turner appeals the judgment entered after he pled guilty to a hit and run involving death as a repeater. His appellate counsel, Leonard D. Kachinsky, filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22)¹ and *Anders v. California*, 386 U.S. 738 (1967). Turner filed a response, counsel filed a supplemental no-merit report, and Turner filed

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

an additional response. Upon review, we conclude there is arguable merit to litigate: (1) whether Turner can challenge the imposition of fees and costs associated with county-appointed counsel given that civil judgments were entered and Turner did not immediately file separate appeals from those judgments; and (2) if so, whether Turner should have been ordered to pay those attorney fees and costs. Accordingly, we reject the no-merit report, dismiss the appeal without prejudice, and extend the deadline for Turner to file a postconviction motion.

The Record reflects that during the circuit court proceedings, six different attorneys represented Turner.² Two of the attorneys were appointed by the Office of the State Public Defender and four were appointed by the county. The four attorneys appointed by the county were Denise Hertz-McGrath, Catherine Lambrechts, Angela Cunningham, and Xavier Solis. During the course of the proceedings, civil judgments relating to their fees and costs were entered against Turner in the following amounts: \$2,231.39 (8/2/19, Attorney McGrath); \$1,519 (9/26/19, Attorney Lambrechts); \$735 (2/7/20, Attorney Cunningham); and \$15,928.34 (9/1/21, Attorney Solis).

When totaled, Turner is responsible for more than \$20,000 in attorney fees and costs. The Record, however, suggests that Turner remained eligible for SPD representation throughout

² This number does not include the Assistant State Public Defender who represented Turner only at his initial appearance.

the course of the lower court proceedings.³ Turner’s eligibility is also reflected in the following CCAP⁴ entries:

- 1-10-2019: “SPD to appoint new counsel.”
- 2-6-2019: “SPD office has been unable to appoint counsel. Court appoints Attorney Denise Hertz-McGrath.
- 8-2-2019: “SPD office has been unable to appoint counsel. Court appoints Attorney Angela Cunningham.”
- 10-17-2019: “SPD to appoint counsel.”
- 11-11-2019: “SPD has been unable to appoint counsel.”
- 12-12-2019: “SPD has not been able to appoint counsel.... Court adjourns hearing to allow SPD additional time to appoint counsel.
- 1-16-2020: “SPD as not been able to locate counsel to appoint on this case.... Court adjourns hearing to allow SPD additional time to appoint counsel.”
- 2-3-2020: “SPD has been unable to appoint counsel. Court appoints Attorney Xavier Solis.”

In his no-merit response, Turner argues that he should not be held responsible for the fees and costs associated with county-appointed counsel. In his supplemental no-merit report, Attorney Kachinsky submits that the attorney fees were authorized under WIS. STAT. § 973.06(1)(e), and in a conclusory fashion asserts that the assessment was lawful and no reasonable argument can be made otherwise. “[Section] 973.06 authorizes a court to impose certain costs, fees, and surcharges upon a defendant as part of his sentence.” *State v. Campbell*,

³ The criminal complaint was filed on July 11, 2018, and the circuit court sentenced Turner on May 13, 2021.

⁴ See *Kirk v. Credit Acceptance Corp.*, 2013 WI App 32, ¶5 n.1, 346 Wis. 2d 635, 829 N.W.2d 522 (noting that this court can take judicial notice of CCAP records).

2006 WI 99, ¶68, 294 Wis. 2d 100, 718 N.W.2d 649. Here, however, the Record is quite clear that the sentencing court did not so require. Indeed, all but one of the judgments were entered prior to Turner’s sentencing.

When resolving an appeal under WIS. STAT. RULE 809.32, the question is whether a potential issue would be “wholly frivolous.” *State v. Parent*, 2006 WI 132, ¶20, 298 Wis. 2d 63, 725 N.W.2d 915 (citation omitted). Because we cannot conclude that further proceedings about whether Turner can challenge the imposition of fees and costs associated with county-appointed counsel would be wholly frivolous, we must reject the no-merit report filed in this case.

Therefore,

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

IT IS FURTHER ORDERED that this matter is referred to the Office of the State Public Defender to consider appointment of new counsel for Turner, any such appointment to be made within forty-five days after the date of this order.

IT IS FURTHER ORDERED that the State Public Defender’s Office shall notify this court within five days after either a new lawyer is appointed for Turner or the State Public Defender determines that new counsel will not be appointed.

IT IS FURTHER ORDERED that the deadline for Turner to file a postconviction motion is extended until forty-five days after the date on which this court receives notice from the State Public Defender’s Office advising either that it has appointed new counsel for Turner or that new counsel will not be appointed.

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

Samuel A. Christensen
Clerk of Court of Appeals