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**DISTRICT III**

December 16, 2013

To:

Hon. Steven R. Cray  
Circuit Court Judge  
Chippewa County Courthouse  
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Chippewa Falls, WI 54729

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Clerk of Circuit Court  
Chippewa County Courthouse  
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Brian R. Peo  
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You are hereby notified that the Court has entered the following opinion and order:

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2013AP1787-CRNM      State of Wisconsin v. Brian R. Peo

Before Hoover, P.J., Mangerson and Stark, JJ.

Counsel for Brian Peo filed a no-merit report pursuant to WIS. STAT. RULE 809.32, concluding no grounds exist to challenge Peo's conviction for felony failure to support a child for more than 120 days, as a repeater. An initial review of the record showed that at the plea hearing, the circuit court did not personally advise Peo of the deportation consequences of his plea, as mandated by WIS. STAT. § 971.08(1)(c). Because we cannot ascertain from the record whether Peo is a United States citizen, a potential issue may arise if he can show that his plea is likely to result in his "deportation, exclusion from admission to this country or denial of

naturalization.” WIS. STAT. § 971.08(2); *see also State v. Douangmala*, 2002 WI 62, 253 Wis. 2d 173, 646 N.W.2d 1.

By order dated October 28, 2013, we directed counsel to either (1) file a motion for plea withdrawal in circuit court; (2) file a supplemental no-merit report addressing why there is no arguable merit to this possible issue; or (3) submit a written statement by Peo indicating he does not wish to withdraw his plea and waives any challenge to the plea on that basis. Counsel has now filed an affidavit averring that he has been unable to confer with Peo. After receiving our October 28 order, counsel wrote Peo seeking direction regarding how Peo wished to proceed. Counsel mailed his correspondence to the Eau Claire address Peo listed on his bond in a pending circuit court case, an address counsel claims Peo has listed “since his release from jail in October 2013.” Neither counsel’s letter nor this court’s October 28 order have been returned undelivered from the Eau Claire address. Counsel, however, has received no response from Peo “in any form.”

In the absence of information regarding Peo’s citizenship status, we cannot say there is no arguable merit to challenge the plea under *Douangmala*. Accordingly, we will reject the no-merit report, dismiss the appeal and direct counsel to file a postconviction motion. If Peo’s input is necessary to pursue the postconviction motion and he remains unavailable, counsel may consider moving the circuit court to dismiss the matter and relieve counsel of further representation. *See, e.g., State v. Bono*, 103 Wis. 2d 654, 655, 309 N.W.2d 400 (Ct. App. 1981) (“It is within the discretion of the court to refuse to decide a criminal appeal if the defendant cannot be made to respond to the court’s judgment.”).

Upon the foregoing,

IT IS ORDERED that the no-merit report is rejected and the appeal is dismissed.

IT IS FURTHER ORDERED that the time for filing a postconviction motion is extended to January 17, 2014.

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