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DISTRICT I

January 13, 2014

To:

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

2013AP1067-CRNM State v. Allen M. Nero (L.C. #2012CF1910)

Before Curley, P.J.

Allen M. Nero appeals his convictions, entered upon his guilty pleas, for one count of delivering schedule I or II narcotics and one count of felony bail jumping, contrary to WIS. STAT. § 961.41(1)(a) & 946.49(1)(b) (2011-12).¹ Postconviction/appellate counsel, Mark A. Schoenfeldt, has filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32, to which Nero has not responded. We have independently reviewed the record and the no-merit report. On December 13, 2013, we directed counsel to file

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

a supplemental report “that addresses whether the trial court actually imposed a DNA surcharge at sentencing and, if so, whether there is any basis to challenge the trial court’s explanation for that DNA surcharge.” We indicated that in the alternative, if counsel identified an issue of merit, he could move to dismiss the appeal and extend the time for filing a postconviction motion.

Attorney Schoenfeldt now moves to dismiss the no-merit report and extend the time for filing a postconviction motion. The motion indicates that counsel believes that there is an issue of arguable merit concerning the DNA surcharge and that Nero has informed counsel that he wishes to pursue that issue. Because a no-merit report is only appropriate if counsel is convinced that an appeal would be wholly frivolous, *McCoy v. Court of Appeals*, 486 U.S. 429, 437 (1988), this court will grant the request.

Therefore,

IT IS ORDERED that the no-merit report in appeal No. 2013AP1067-CRNM is rejected and the appeal is dismissed without prejudice.

IT IS FURTHER ORDERED that the deadline for Attorney Mark A. Schoenfeldt to file a postconviction motion on Nero’s behalf is extended to sixty days from the date of this order. *See* WIS. STAT. RULE 809.82(2)(a) (2011-12).

Diane M. Fremgen
Clerk of Court of Appeals