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DISTRICT II

May 21, 2014

To:

Hon. Fred H. Hazlewood
Reserve Judge

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

2013AP2082-CRNM State of Wisconsin v. Jeffrey A. White (L.C. #2012CF29)

Before Brown, C.J., Neubauer, P.J., and Gundrum, J.

Jeffrey A. White, by Attorney Andrew H. Morgan, appealed from a judgment convicting him of two counts of armed robbery with threat of force, two counts of false imprisonment, all as party to a crime, and one count of carrying a concealed weapon. The trial court sentenced him to a seventeen-year term bifurcated as nine years' initial confinement and eight years' extended supervision. Morgan previously filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2011-12)¹ and *Anders v. California*, 386 U.S. 738 (1967). On April 24, 2014, this court issued

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

an order stating that it could not conclude that a challenge to the DNA surcharge would lack arguable merit.² *See State v. Cherry*, 2008 WI App 80, ¶¶8-9, 312 Wis. 2d 203, 752 N.W.2d 393. We directed Morgan to evaluate this matter and discuss with White the prospect of filing a postconviction motion raising this issue and stated that, after consultation with White, counsel should file a supplemental report advising whether White wanted to file a postconviction motion. We stated that counsel then should file a supplemental no-merit report, including an affidavit, advising whether White wanted to file a postconviction motion on this issue alone. *See* RULE 809.32(1)(f). We stated that if White did not wish to file a postconviction motion, he would be deemed to have affirmatively waived the potential *Cherry* issue, and the appeal would proceed under RULE 809.32. We also explained what would follow if White did want to file a postconviction motion.

On May 5, 2014, Morgan filed a supplemental report and affidavit indicating that he has discussed with White a potential challenge to the DNA surcharge. Counsel advises that White informed him that he has nearly finished paying the DNA surcharge and does not wish to pursue a postconviction motion regarding the *Cherry* issue.

Upon the foregoing reasons,

IT IS ORDERED that the judgment is summarily affirmed. *See* WIS. STAT. RULE 809.21.

² Our reasons for reaching this conclusion were detailed in the April 24, 2014 order and will not be repeated here.

IT IS FURTHER ORDERED that the no-merit report is accepted and Attorney Andrew H. Morgan's motion to be relieved of further representation of White is granted.

Diane M. Fremgen
Clerk of Court of Appeals