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September 12, 2014

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

2012AP1820-CRNM State v. Devin T. White
(L.C. #2010CF004776)

Before Curley, P.J.

By order dated July 14, 2014, this court directed Attorney Matthew S. Pinix to file a supplemental no-merit report to assist this court in its analysis. The court, upon its independent review of the record, the no-merit report, and White's response, directed counsel to address a potential claim that the jury was not properly instructed relative to White's claim of self-defense. Counsel did not address this specific issue in his original no-merit report. We indicated that in the alternative, counsel could file a motion seeking to dismiss the no-merit appeal and to extend the deadline for filing a postconviction motion in order to address the potential issue.

On September 11, 2014, Attorney Pinix filed a motion to dismiss the no-merit appeal and extend the deadline for filing a postconviction motion. The motion indicates that “counsel has determined that an appeal in White’s case would not be wholly frivolous.” 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 motion and afford counsel the requested ninety-day extension.

Upon the foregoing,

IT IS ORDERED that the no-merit report in appeal No. 2012AP1820-CRNM is rejected and the appeal is dismissed without prejudice.

IT IS FURTHER ORDERED that the deadline for filing a postconviction motion or notice of appeal in Milwaukee County Circuit Court Case No. 2010CF4776 is extended to December 11, 2014. *See* WIS. STAT. RULE 809.82(2)(a) (2011-12).

Diane M. Fremgen
Clerk of Court of Appeals