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DISTRICT I

January 26, 2015

To:

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

2013AP2315-CRNM State of Wisconsin v. Robert Ross (L.C. #2010CF4189)

Before Curley, P.J.

By order dated December 23, 2014, this court directed Attorney Scott Szabrowicz to file a supplemental no-merit report on behalf of Robert Ross. Upon this court's independent review of the record, the no-merit report, and Ross's response, we noted that Ross had pointed out he was statutorily ineligible for the challenge incarceration program, and that he would be ineligible due to his age based on the circuit court's eligibility date. We also noted Ross's claim that the way the parties dealt with a question from the jury might have violated his constitutional right to be present.

Attorney Szabrowicz, on behalf of Ross, now moves to dismiss the appeal and seeks an extension of time for filing a supplemental postconviction motion in order to address the additional issues of arguable merit that counsel has identified. Counsel further represents that Ross agrees with this course of action. Because a no-merit report is only appropriate if counsel is convinced that an appeal would be wholly frivolous, *see McCoy v. Court of Appeals*, 486 U.S. 429, 437 (1988), this court will grant the motion.

Upon the foregoing,

IT IS ORDERED that the no-merit report in appeal No. 2013AP2315-CRNM is rejected and the appeal is dismissed without prejudice.

IT IS FURTHER ORDERED that the deadline for filing a supplemental postconviction motion or notice of appeal in Milwaukee County Circuit Court case No. 2010CF4189 is extended to March 27, 2015.

Diane M. Fremgen
Clerk of Court of Appeals