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**DISTRICT II**

August 19, 2015

To:

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Circuit Court Judge  
Waukesha County Courthouse  
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Robert K. Stein  
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You are hereby notified that the Court has entered the following opinion and order:

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2015AP720-CRNM      State of Wisconsin v. Robert K. Stein (L.C. #2013CF1409)

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

Robert K. Stein appeals from a judgment of conviction for escape. Stein's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2013-14),<sup>1</sup> and *Anders v. California*, 386 U.S. 738 (1967). It does not appear that Stein received a copy of the report

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

because mail sent by this court to his last known address was returned undelivered.<sup>2</sup> Upon consideration of the report and an independent review of the record, we conclude that the judgment may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

While serving a jail sentence with Huber privileges, Stein failed to return to the Huber facility. He was arrested about a month later after breaking into a home where a former girlfriend was staying. He entered a guilty plea to the escape charges, and potential charges of domestic disorderly conduct and criminal damage to property were not charged but included as read-ins. At sentencing, the prosecutor recommended probation as promised in the plea agreement. Stein was sentenced to one year initial confinement and two years' extended supervision. The sentence was ordered to be served consecutive to a sentence imposed on a prior

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<sup>2</sup> A postconviction motion for sentence adjustment indicated that Stein's scheduled release date was March 20, 2015. Apparently Stein was released from custody as mail to the prison was returned. The Clerk of the Court of Appeals contacted Stein's supervising agent to inquire about Stein's post-release address. The agent did not have a current address and indicated that Stein was considered to have absconded. This court has discretion to dismiss an appeal when a defendant has absconded. *See State v. Bono*, 103 Wis. 2d 654, 655, 309 N.W.2d 400 (Ct. App. 1981). Because we have no easy way to establish factually that Stein has absconded, we decide the no-merit appeal.

Additionally, by failing to keep appointed counsel, this court, and his supervising agent apprised of his current address, Stein has forfeited his right to notice of filing of the no-merit report and to file a response. *See State v. John*, 60 Wis. 2d 730, 736, 211 N.W.2d 463 (1973) (when, by escape, a defendant "puts himself in a position where he cannot aid the court ... he has frustrated the administration of justice, made it impossible for the court to consider his petition, and has abandoned his application for relief"); *State ex rel. Van Hout v. Endicott*, 2006 WI App 196, ¶36, 296 Wis. 2d 580, 724 N.W.2d 692 ("a defendant, by actions designed to obfuscate and frustrate the judicial review process, can give up" the right to appeal); *State v. Woods*, 144 Wis. 2d 710, 715-16, 424 N.W.2d 730 (Ct. App. 1988) (waiver of right to counsel may occur by operation of law based on a defendant's own actions).

conviction. Restitution was set at \$607.08 for cleaning the home that was the subject of the criminal damage to property read-in charge.<sup>3</sup>

The no-merit report addresses the potential issues of whether Stein's plea was freely, voluntarily, and knowingly entered and whether the sentence was the result of an erroneous exercise of discretion. This court is satisfied that the no-merit report properly analyzes the issues it raises as without merit, and this court will not discuss them further.

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the conviction, and discharges appellate counsel of the obligation to represent Stein further in this appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Michelle L. Velasquez is relieved from further representing Robert K. Stein in this appeal. *See* WIS. STAT. RULE 809.32(3).

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

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<sup>3</sup> Approximately six weeks before his scheduled release date, Stein filed a postconviction motion for sentence adjustment under WIS. STAT. § 973.195. The motion was denied. Any challenge to the circuit court's exercise of discretion in denying the motion is moot because Stein has been released.