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**DISTRICT IV**

May 31, 2016

*To:*

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

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2014AP2539-CRNM      State of Wisconsin v. Mary E. Crowley (L.C. # 2013CT341)

Before Kloppenburg, P.J.

Appointed counsel for appellant Mary Crowley filed a no-merit report under WIS. STAT. RULE 809.32 (2013-14).<sup>1</sup> We now reject the no-merit report, dismiss the appeal, and extend the time to file a postconviction motion.

In our order of November 4, 2015, we directed counsel for appellant Mary Crowley to review two issues for arguable merit. The first issue related to the lack of the immigration warning during the plea colloquy. In January 2016, counsel informed us that she determined that Crowley is a citizen, and therefore this issue has no arguable merit.

The second issue we raised related to the \$25 charge imposed by the circuit court for a blood draw from Crowley. We noted that the applicable statute allows a charge for the blood draw in the amount charged to or paid by the law enforcement agency, or that the agency reasonably expects to be charged. *See* WIS. STAT. § 973.06(1)(j). We noted that the record did not appear to contain evidence to support a charge amount of \$25 in Crowley's case.

In January 2016, Crowley's attorney sought an extension of the time to respond to our November 4 order as to this issue. The ground was that the State informed counsel that it would provide counsel with information to support the \$25 charge, but the State had not yet done so. We granted an extension to February 29, 2016. On that date, counsel sought a further extension because the State had not yet responded. We granted the extension to April 1, 2016.

On May 13, 2016, having heard nothing further, we directed counsel to advise us of the status. That order crossed in our internal process with a notice that representation in this appeal

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

had been transferred to a different attorney in the same firm. In a letter dated May 20, 2016, the former attorney, being more familiar with the case, restates the above information about the State not responding, and states that counsel is continuing to attempt to reach the State for evidence in support of the blood draw charge.

We decline to delay the case further. We see no reason to believe that the coming months will be more likely to produce an answer from the State than the previous months were. Therefore, we conclude that it would not be frivolous for Crowley to move to strike the \$25 charge on the ground that the State made the request for the charge without providing the evidence required by statute; that the court's imposition of the charge was in error due to the lack of supporting evidence; and that the proper remedy is to delete the charge.

IT IS ORDERED that the no-merit report is rejected and this appeal is dismissed without prejudice.

IT IS FURTHER ORDERED that the time to file a postconviction motion is extended to thirty days from the date of this order.

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