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DISTRICT III

November 8, 2016

To:

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

2015AP1079-CRNM State of Wisconsin v. Zachary J. Froehlich (L.C. # 2012CF434)

Before Stark, P.J., Hruz and Seidl, JJ.

Counsel for Zachary Froehlich filed a no-merit report pursuant to WIS. STAT. RULE 809.32, concluding no grounds exist to challenge Froehlich's conviction for party to the crime of first-degree reckless homicide. Froehlich filed a response raising several challenges to his conviction and sentence, including a claim that the State breached the plea agreement with respect to its sentence recommendation, and trial counsel was ineffective by failing to object to the breach. Counsel filed a supplemental no-merit report acknowledging the breach and indicating "this issue at a minimum is worthy of a postconviction motion."

A no-merit report is only appropriate if further proceedings would be wholly frivolous. *See McCoy v. Court of Appeals*, 486 U.S. 429, 437 (1988). Because counsel indicates there is a possible issue to pursue, we will reject the no-merit report, dismiss this appeal and extend the time for counsel to file a postconviction motion regarding the alleged breach. If counsel determines there are other arguably meritorious issues to be pursued, the postconviction motion may also raise those issues.

Upon the foregoing,

IT IS ORDERED that the no-merit report is rejected and the appeal is dismissed.

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

Diane M. Fremgen
Clerk of Court of Appeals