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DISTRICT III/IV

January 25, 2018

To:

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

2016AP852-CRNM State of Wisconsin v. Cody A. Stephenson (L.C. # 2015CF19)

Before Lundsten, P.J., Sherman and Blanchard, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Cody Stephenson appeals a judgment convicting him of homicide by use of a vehicle while under the influence of a controlled substance. Attorney Dennis Schertz filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2015-16). Upon

reviewing the report, this court asked counsel to submit a supplement to the no-merit report addressing the factual basis for the plea and whether trial counsel had adequately investigated and/or advised Stephenson about a potential affirmative defense of due care under WIS. STAT. § 940.09(2)(a).

Counsel now advises us that he is uncertain as to the sufficiency of the factual basis for the plea because the factual basis depends on inferences rather than any direct statement or document showing that Stephenson was found to have a controlled substance in his blood. Counsel further believes that it would not be frivolous to pursue whether trial counsel adequately investigated and/or advised Stephenson about the affirmative defense issue.

Therefore,

IT IS ORDERED that the no-merit report is rejected and the appeal is dismissed without prejudice. Attorney Dennis Schertz or a successor appointed by the State Public Defender shall continue to represent Cody Stephenson.

IT IS FURTHER ORDERED that the time for Stephenson to file a postconviction motion shall be extended until March 20, 2018.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Diane M. Fremgen
Acting Clerk of Court of Appeals