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DISTRICT I

July 11, 2018

To:

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

2017AP1164-CRNM State of Wisconsin v. Richard Dell Abbott (L.C. # 2010CF4560)

Before Kessler, P.J., Brennan and Dugan, 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).

Richard Dell Abbott appeals an order denying his motion for sentence credit. Attorney Chris M. Bailey was appointed by the State Public Defender's Office to represent Abbott. Attorney Bailey filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT.

RULE 809.32 (2015-16),¹ and *Anders v. California*, 386 U.S. 738, 744 (1967). Abbott has not provided Attorney Bailey with his current address, so Attorney Bailey was unable to provide Abbott with a copy of the no-merit report and inform him of his right to respond to the report. After considering the no-merit report and conducting an independent review of the record, we conclude that there are no issues of arguable merit that Abbott could raise on appeal. Therefore, we affirm. *See* WIS. STAT. RULE 809.21.²

The no-merit report first addresses whether the motion for sentence credit was properly denied. Abbott has raised this issue in the circuit court seven times. We agree with the no-merit report's conclusion that this claim is procedurally barred by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 181-82, 517 N.W.2d 157 (1994). There would be no arguable merit to this claim.

The no-merit report next addresses whether the circuit court had the authority and grounds to assess \$50 in costs against Abbott. The circuit court assessed \$50 in costs against Abbott for filing his seventh motion seeking the same relief. In a prior ruling, the circuit court warned Abbott that he would be sanctioned if he continued to file the same motion. ““A court faced with a litigant engaged in a pattern of frivolous litigation has the authority to implement a remedy that may include restrictions on that litigant's access to the court.”” *Minniecheske v.*

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

² Attorney Bailey has no current address or telephone number for Abbott. Attorney Bailey has detailed his efforts to reach Abbott in prior communications with this court, and explained that Abbott has refused to provide him with an address when he has called Attorney Bailey for information about the status of the case. As we explained in our order dated March 2, 2018, a defendant has an obligation to cooperate with his lawyer. *See McClelland v. State*, 84 Wis. 2d 145, 152, 267 N.W.2d 843 (1978). Nonetheless, we conducted a no-merit review of this appeal even though Abbott has not kept his attorney apprised of his whereabouts.

Griesbach, 161 Wis. 2d 743, 748, 468 N.W.2d 760 (Ct. App. 1991) (citation omitted). The circuit court did not misuse its discretion in assessing \$50 in costs after Abbott failed to heed its warning. There would be no arguable merit to this claim.

Our independent review of the record reveals no other arguable basis for reversing the circuit court's order. Therefore, we affirm and relieve Attorney Bailey from further representation of Abbott.

IT IS ORDERED that the order of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Chris M. Bailey is relieved of further representation of Richard Dell Abbott in this matter. *See* WIS. STAT. RULE 809.32(3).

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

Sheila T. Reiff
Clerk of Court of Appeals