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**DISTRICT IV**

October 9, 2018

To:

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

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2018AP688-NM

In the matter of the mental commitment of N. W.: Dane County v.  
N. W. (L.C. #2017ME201)

Before Sherman, J.<sup>1</sup>

**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).**

Attorney Len Kachinsky, appointed counsel for appellant N.W., has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 and *Anders v.*

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

*California*, 386 U.S. 738, 744 (1967). The no-merit report addresses whether the parties' stipulation and the record supported the orders extending N.W.'s involuntary commitment and treatment, and whether there were any procedural errors that deprived the court of competency to proceed. N.W. was sent a copy of the report, but has not filed a response. Because the no-merit report does not establish that further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32, I reject the no-merit report.

On November 6, 2017, Dane County filed a petition to extend N.W.'s involuntary commitment. On December 1, 2017, the circuit court held a hearing on the petition. At the hearing, counsel informed the court that the parties had reached a stipulation to extend N.W.'s involuntary commitment and treatment for one year, and provided the court with a written stipulation signed by N.W. and counsel. The circuit court accepted the stipulation and entered orders extending N.W.'s involuntary commitment and involuntary treatment for one year.

The no-merit report concludes that there would be no arguable merit to a challenge to the validity of the stipulation because counsel stated the stipulation on the record, N.W. signed a written stipulation, and the examining professionals' reports provided grounds for involuntary commitment and treatment. Counsel states that "[c]onspicuously absent" from the due process rights enumerated in the involuntary commitment statutes and case law is a requirement that the circuit court personally address the subject of involuntary commitment proceedings and ascertain that a stipulation for the extension of involuntary commitment and treatment is knowing, intelligent, and voluntary. See WIS. STAT. § 51.20; *S.Y. v. Eau Claire County*, 162 Wis. 2d 320, 332-36, 469 N.W.2d 836 (1991). Counsel's discussion of this issue does not establish that it would be wholly frivolous to argue that N.W.'s due process rights were violated when the circuit court accepted his stipulation to extend the involuntary commitment and treatment orders

without conducting a colloquy with N.W. to ensure that the stipulation was knowing, intelligent, and voluntary.

The question in a no-merit appeal is whether further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32. Here, counsel asserts that there is no enumerated due process right to a personal colloquy to ensure that a stipulation to extend an involuntary commitment is knowing, intelligent, and voluntary. However, counsel does not cite any authority providing that the subject of involuntary commitment proceedings does not have a due process right to a personal colloquy to establish that a stipulation to extend an involuntary commitment is knowing, intelligent, and voluntary.

The open question of whether the subject of an involuntary commitment proceeding has a due process right to a personal colloquy to ensure a knowing, intelligent, and voluntary stipulation to extend an involuntary commitment was recognized by the supreme court in *Sauk County v. Aaron J.J.*, 2005 WI 162, 286 Wis. 2d 376, 706 N.W.2d 659.<sup>2</sup> The supreme court accepted Aaron's petition for review of this court's unpublished decision that affirmed the circuit court order denying Aaron's motion to vacate the stipulated order for his involuntary commitment. *Id.*, ¶1. The supreme court stated the issue presented for review as: "Was [Aaron's] constitutional right to due process violated when the circuit court accepted a stipulation that grounds existed for an involuntary mental commitment under [WIS. STAT.] ch. 51

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<sup>2</sup> The court also recognized the unanswered question, "What statutory provision or other law is the source of the stipulated procedure that the parties followed in the circuit court?" *Sauk County v. Aaron J.J.*, 2005 WI 162, ¶2, 286 Wis. 2d 376, 706 N.W.2d 659. Moreover, a dissenting opinion recognized an "uncertain[ty] of the source of any statutory authority for a so-called 'voluntary commitment' procedure." *Id.*, ¶5 & n.2. Here, the no-merit report does not cite any authority authorizing a stipulated involuntary commitment or setting forth any required procedure for a court to accept such a stipulation.

without conducting a colloquy to ensure a knowing, intelligent, and voluntary agreement to the commitment?” *Id.* The court did not resolve this question, however, because it dismissed the petition for review as improvidently granted after determining that “some questions which may be essential to the proper resolution of this case were either not addressed or not sufficiently presented by the briefing and argument.”<sup>3</sup> *Id.*, ¶2.

In sum, the no-merit report has not established that it would be wholly frivolous to argue that N.W.’s due process rights were violated when the circuit court accepted his stipulation for involuntary commitment and treatment without conducting a colloquy to ensure the stipulation was knowing, intelligent, and voluntary. Because a postdisposition motion to vacate the orders for involuntary commitment and treatment would be supported by at least one non-frivolous argument, I reject the no-merit report.

Therefore,

IT IS ORDERED that the no-merit report is rejected and this no-merit appeal is dismissed. The time to file a postdisposition motion is extended to sixty days from the date of this opinion.

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

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*

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<sup>3</sup> The court also noted that the appeal was potentially moot because Aaron was no longer subject to a commitment order. *Id.*, ¶3. The court recognized that “mootness is not necessarily a bar to a decision by this court in light of the mootness exceptions,” but stated that “the apparent lack of a live controversy adds to our concerns here.” *Id.* Here, N.W. is currently subject to the stipulated orders for involuntary commitment and treatment.