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DISTRICT IV

August 8, 2019

To:

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

2018AP182-CRNM State of Wisconsin v. Darrell M. Smith (L.C. # 2015CF205)

Before Fitzpatrick, P.J., Blanchard and Graham, 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).

Attorney Suzanne Edwards was appointed to represent Darrell Smith in this appeal from a judgment of conviction. On January 25, 2018, Edwards filed a no-merit notice of appeal on

Smith's behalf. *See* WIS. STAT. RULE 809.32(2) (2017-18). On March 22, 2018, Edwards filed the no-merit report.¹

We now have received a letter from Smith in which he requests that this court dismiss the no-merit appeal so that he may pursue a *pro se* postconviction motion alleging ineffective assistance of trial counsel. Smith's motion states that he is making the decision to dismiss the appeal and proceed *pro se* "intelligently, knowingly, and voluntarily." Smith further asserts that he "is aware of the fact that he is responsible for meeting deadlines, filing briefs and motions that comply with appellate court rules."

Because Smith's motion reflects that he understands the risks of discharging his appointed counsel and proceeding *pro se*, the court will grant the motion.

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

IT IS FURTHER ORDERED that Attorney Suzanne Edwards is relieved from any further representation of Smith in this matter.

¹ This court previously placed this appeal on hold because the Wisconsin Supreme Court granted a petition for review in *State v. Trammell*, 2017AP1206-CR, unpublished slip op. (WI App May 8, 2018). The order noted that here, at trial, jury instruction Wis JI-Criminal 140 was given to the jury, and that the supreme court granted review in *Trammell* to address whether the holding in *State v. Avila*, 192 Wis. 2d 870, 535 N.W.2d 423 (1995)—that it is "not reasonably likely" that Wis JI-Criminal 140 reduces the State's burden of proof—is good law; or should *Avila* be overruled on the ground that it stands rebutted by empirical evidence. The supreme court has now issued a decision in *Trammell*, holding "that Wis JI-Criminal 140 does not unconstitutionally reduce the State's burden of proof below the reasonable doubt standard." *State v. Trammell*, 2019 WI 59, ¶67, 387 Wis. 2d 156, 928 N.W.2d 564.

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

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

Sheila T. Reiff
Clerk of Court of Appeals