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**DISTRICT I**

February 24, 2020

To:

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

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2018AP955-CRNM      State of Wisconsin v. Javier Molinar (L.C. # 2014CF4891)

Before Brash, P.J., Dugan and White, 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).**

Javier Molinar appeals the judgment convicting him of two counts: conspiracy to deliver more than fifty grams of heroin and conspiracy to deliver more than ten but less than fifty grams

of heroin. *See* WIS. STAT. §§ 961.41(1x), 961.41(1m)(d)3.-4 (2013-14).<sup>1</sup> His appellate counsel, Pablo Galaviz, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Molinar filed a response. Upon consideration of the report, response, and an independent review of the record, we reject the no-merit report because there is a potential issue of arguable merit presented by the record and not discussed in the no-merit report. The time for Molinar to file a postconviction motion under WIS. STAT. RULE 809.30 is extended.

We previously concluded that a supplemental report was necessary to address the validity of Molinar's pleas. In a written order dated November 18, 2019, this court explained that it had identified a potential issue associated with the plea colloquy: specifically, misstatements by the circuit court related to the nature of the crime identified as Count 12 and the range of punishments that Molinar subjected himself to by entering a plea on that count. *See* WIS. STAT. § 971.08(1)(a); *see also State v. Bangert*, 131 Wis. 2d 246, 261-62, 389 N.W.2d 12 (1986). Consequently, this court afforded Attorney Galaviz thirty days to file his supplemental no-merit report.

Shortly thereafter, Molinar submitted a late no-merit response, which we accepted. *See* WIS. STAT. RULE 809.32(1)(e). So as to allow Attorney Galaviz to address the claims in Molinar's response, this court, on its own motion, afforded Attorney Galaviz additional time to file his supplemental no-merit report. Attorney Galaviz did not comply with the order; consequently, on our own motion, we again extended the time for him to do so. When that deadline passed, this court again extended, on its own motion for the third time, Attorney Galaviz's time to file a

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

supplemental no-merit report. We further advised Attorney Galaviz that continued noncompliance could result in a per diem sanction imposed under WIS. STAT. RULE 809.83(2).

On February 10, 2020, Molinar filed a motion with this court requesting that new counsel be appointed, asserting that “it would appear that [Attorney] Galaviz has lost interest in his duty to provide effective counseling in my case.”

Attorney Galaviz’s deadline once again has passed, and he has not complied with this court’s order. We cannot conclude that further postconviction proceedings on Molinar’s behalf lack arguable merit. Therefore, the no-merit report is rejected.

IT IS ORDERED that the no-merit report filed by Attorney Pablo Galaviz is rejected and this appeal is dismissed without prejudice.

IT IS FURTHER ORDERED that this matter is referred to the Office of the State Public Defender for the appointment of new counsel, with any such appointment to be made within fifteen days.

IT IS FURTHER ORDERED that the deadline to file a postconviction motion or notice of appeal is extended to sixty days from the date of this order.

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*