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DISTRICT I

April 8, 2020

To:

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Milwaukee County Circuit Court
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You are hereby notified that the Court has entered the following order:

2018AP235-CRNM State of Wisconsin v. Terry Tyrone Blunt (L.C. # 2014CF1667)

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).

Terry Tyrone Blunt appeals from a judgment, entered upon a jury's verdict, convicting him of felony murder as a party to a crime. Attorney Jeffrey J. Guerard filed a no-merit report and a supplemental no-merit report concluding that further postconviction or appellate

proceedings would lack arguable merit. *See* WIS. STAT. RULE 809.32 (2017-18).¹ The no-merit reports do not address the issue of sentence credit. We conclude that Blunt could pursue an arguably meritorious claim for an additional ten days of credit for time he spent in custody before sentencing. Accordingly, we reject the no-merit report, dismiss this appeal without prejudice, and extend the deadline for filing a postconviction motion.

The record reflects that on April 18, 2014, police arrested Blunt in connection with the felony murder charge at issue in this case, and he remained in custody thereafter. The matter proceeded to trial, and on February 4, 2016, a jury found him guilty. The circuit court sentenced him on May 11, 2016, to a thirty-year term of imprisonment bifurcated as eighteen years of initial confinement and twelve years of extended supervision. At the sentencing hearing, Blunt, by counsel, requested credit for 744 days in custody for the period from April 18, 2014, until the sentencing date. *See* WIS. STAT. § 973.155(1)(a) (providing that a convicted offender shall be given credit for days in custody in connection with the course of conduct for which sentence is imposed, including time awaiting trial, being tried, and awaiting sentence). The circuit court awarded the 744 days of credit requested.

When we consider an appeal filed under WIS. STAT. RULE 809.32, the question is whether a potential issue would be “wholly frivolous.” *State v. Parent*, 2006 WI 132, ¶20, 298 Wis. 2d 63, 725 N.W.2d 915. The test is not whether the lawyer should expect the argument to prevail. *See* SCR 20:3.1, cmt. (action is not frivolous even though the lawyer believes his or her client’s position will not ultimately prevail). Rather, the question is whether the potential issue so lacks a

¹ All references to the Wisconsin statutes are to the 2017-18 version unless otherwise noted.

basis in fact or law that it would be unethical for the lawyer to prosecute the appeal. *See McCoy v. Court of Appeals*, 486 U.S.429, 436 (1988).

Here, this court has reviewed the record as required by *Anders v. California*, 386 U.S. 738 (1967), and we have consulted the calendars for 2014-2016, as well as the website <http://www.timeanddate.com>. Those resources reflect that Blunt could pursue a nonfrivolous argument that the period from April 18, 2014, until May 11, 2016, constitutes 754 days and that he is therefore entitled to an additional ten days of credit against his sentence. We emphasize that we do not reach any conclusion that such an argument would or should prevail, only that such an argument would not be frivolous within the meaning of WIS. STAT. RULE 809.32 and *Anders*.

In light of the foregoing, we must reject the no-merit report filed in this case. We add that our decision does not mean we have reached a conclusion about the arguable merit of any other potential issue in the case. Blunt is not precluded from raising any issue in postconviction proceedings that counsel may now believe has merit.

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

IT IS FURTHER ORDERED that the deadline for Blunt to file a postconviction motion is extended through June 23, 2020. *See* WIS. STAT. RULE 809.82(2)(a).

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

Sheila T. Reiff
Clerk of Court of Appeals