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**DISTRICT I/III**

April 14, 2020

To:

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

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2018AP1260-CRNM      State of Wisconsin v. Monti Lamar Cannon  
(L. C. No. 2016CF3838)

Before Stark, P.J., Hruz and Seidl, 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).**

Counsel for Monti Lamar Cannon filed a no-merit report concluding there is no basis to challenge Cannon's convictions, following a jury trial, for armed robbery with use of force and

aggravated battery with intent to inflict great bodily harm—use of a dangerous weapon. The convictions were based on trial testimony that Cannon walked up to an individual on a sidewalk in Milwaukee at 11:00 a.m., shot him numerous times, and robbed him of his wallet. Police officers in an unmarked squad car who were responding to a report of a break-in at a school observed Cannon approach the victim, and the officers also heard the shots. The officers pursued Cannon as he fled the crime and apprehended him in an alley. The gun and the victim's wallet were in Cannon's possession when he was apprehended. The jury rejected Cannon's contention at trial that he shot the victim in self-defense.

Cannon responded to the no-merit report, and counsel then filed a supplemental no-merit report. Subsequently, counsel filed what we construed as a motion to dismiss the no-merit report; to withdraw as counsel; and to grant an extension of time for Cannon to file a postconviction motion or notice of appeal. Counsel represented to this court that Cannon had confirmed that he wanted counsel to file this motion so that he could proceed pro se.

Prior to acting on the motion, we required Cannon to reiterate his desire to discharge counsel with knowledge of certain facts. Specifically, by order dated August 27, 2019, we advised Cannon that if the present motion was granted, we could not guarantee that new counsel would be appointed should Cannon subsequently decide that discharging counsel and proceeding pro se was ill-advised. Further, should Cannon proceed pro se and deem the filing of a postconviction motion necessary, he would be responsible for filing that motion in the circuit court, presenting evidence or argument, and arranging for the appearance of necessary witnesses. We also advised Cannon that proceeding pro se in this court on appeal would require Cannon to draft and timely file the appropriate number of copies of a brief and appendix that complied with WIS. STAT. RULE 809.19 (2017-18) (the content, form and length requirements for appellate

briefs). We further advised Cannon that any briefs he filed must be coherent and must set forth arguments supported by references to the record on appeal and to legal authority. If an extension to brief an appeal was necessary, Cannon would need to seek an extension supported by good cause. We also advised Cannon that failure to brief an appeal in compliance with these requirements could result in dismissal of the appeal with prejudice. Cannon was further advised that the foregoing was not intended to be an all-inclusive discussion of the difficulties and disadvantages of self-representation.

In addition, our order advised Cannon that it may be easier for a prisoner to respond to a no-merit report than to appear pro se in a postconviction motion or an appeal. A response to a no-merit report simply informs this court of issues the defendant wishes to raise in postconviction proceedings. This court then independently reviews the record, the no-merit report, and any response, in order to determine whether there is arguable merit to any issue. If arguable merit is found, counsel is then ordered to proceed with a postconviction motion or an appeal as appears appropriate.

We advised Cannon that a prisoner may represent him- or herself on appeal if the prisoner is a person of average intelligence and ability. We also advised that Cannon's response to this court must demonstrate literacy, an ability to communicate coherently, and minimal competency before we would grant the motion. We ordered Cannon to carefully consider our order and to advise this court in writing whether he still wished to discharge his appointed counsel and proceed pro se. Finally, we ordered the motion and the no-merit report held in abeyance until further order of this court.

Our August 27, 2019 order also referred this matter to the Office of the State Public Defender (SPD) to determine whether successor counsel would be appointed in the event we granted the present motion. The SPD subsequently notified this court—with a copy of the notice to Cannon—that Cannon’s present counsel had accepted the SPD appointment to represent Cannon in postconviction and appeal proceedings. We were further advised that if Cannon chose to discharge present counsel, he would be waiving his right to public defender representation for appeal and no other public defender would be appointed. The SPD also stated that, regardless of whether Cannon changed his mind or came to regret his decision to discharge present counsel, the SPD would not be appointing successor counsel for Cannon in this matter.

Cannon subsequently filed a response to our August 27, 2019 order, in which he acknowledged the advisements contained in our August 27 order and confirmed that he desired to dismiss the no-merit report and proceed without counsel. Cannon stated that he wished this court to “grant him leave to move forward [pro se] with the earnest effort to present his case in chief in the lower court, and reassert bona fide claims where relief can be granted.” We will therefore grant counsel’s motion to withdraw, dismiss the no-merit appeal, and extend the time for filing a postconviction motion or notice of appeal.

Upon the foregoing,

IT IS ORDERED that counsel’s motion to withdraw is granted.

IT IS FURTHER ORDERED that the no-merit appeal is dismissed without prejudice.

IT IS FURTHER ORDERED that the time for filing a postconviction motion or notice of appeal is extended to sixty (60) days from the date of this order.

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