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DISTRICT I

February 16, 2021

To:

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

2019AP1417-CRNM State of Wisconsin v. Terronce R. Gardner, Jr. (L.C. # 2018CF732)

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).

Before Brash, P.J., Dugan and Donald, JJ.

Terronce R. Gardner, Jr., appeals from a judgment of conviction for one count of first-degree reckless homicide by delivery of a controlled substance, contrary to WIS. STAT. § 940.02(2)(a) (2017-18).¹ Gardner's appellate counsel, Thomas J. Erickson, has filed a no-merit

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

report pursuant to *Anders v. California*, 386 U.S. 738 (1967) and WIS. STAT. RULE 809.32. Gardner has filed a response.

On November 27, 2020, we issued an order directing appellate counsel to file a supplemental no-merit report addressing numerous issues, including providing facts outside the record if necessary. *See* WIS. STAT. RULE 809.32(1)(f). We said that in the alternative, if appellate counsel identified one or more issues of arguable merit, then rather than filing a supplemental no-merit report, he should voluntarily dismiss this appeal and request an extension of time to file a postconviction motion.

Appellate counsel now moves to dismiss this appeal and extend the time for filing a postconviction motion. The motion explains that counsel has identified an issue of arguable merit. Because a no-merit report is only appropriate if counsel is convinced that an appeal would be wholly frivolous, *McCoy v. Court of Appeals*, 486 U.S. 429, 437 (1988), this court will grant the motion.

IT IS ORDERED that the no-merit report in appeal No. 2019AP1417-CRNM is rejected and the appeal is dismissed without prejudice.

IT IS FURTHER ORDERED that the deadline for Attorney Thomas J. Erickson to file a postconviction motion on Gardner's behalf is extended to March 16, 2021. *See* WIS. STAT. RULE 809.82(2)(a) (2017-18).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals