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**DISTRICT I**

March 11, 2021

To:

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

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2020AP373-CRNM      State of Wisconsin v. Jared J. Lanier-Cotton (L.C. # 2018CF2435)

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).**

Jared Lanier-Cotton, by Attorney Michael S. Holzman, is pursuing an appeal under the no-merit procedures set forth in WIS. STAT. RULE 809.32 (2019-20).<sup>1</sup> In a supplemental no-merit report, Attorney Holzman discusses whether the 136 days of sentence credit that the circuit court

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

awarded Lanier-Cotton reflected the entirety of the days that he spent in custody prior to sentencing in this matter. Specifically, Attorney Holzman states that Lanier-Cotton properly received four days of sentence credit for the period following his initial arrest in May 2018 until he posted a signature bond;<sup>2</sup> and that he properly received 132 days of sentence credit for the period from August 10, 2018, when he was arrested on a bench warrant, until his sentencing on December 21, 2018. We conclude that Lanier-Cotton could pursue an arguably meritorious claim for additional 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.

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 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).

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<sup>2</sup> Attorney Holzman states that the complaint in this case was filed on March 25, 2018, and that Lanier-Cotton spent four days in custody that month before he was released on a signature bond. The record reflects that the State filed the complaint in this case on May 25, 2018, and that Lanier-Cotton spent four days in custody in May 2018 before signing a signature bond on May 27, 2018. We assume that Attorney Holzman’s references to March 2018 are scrivener’s errors.

In this case, we have reviewed the record as required by *Anders v. California*, 386 U.S. 738 (1967), and we have consulted the calendar for 2018 as well as the website <https://www.timeanddate.com>. Those resources reflect that Lanier-Cotton could pursue a nonfrivolous argument that the period from August 10, 2018, until December 21, 2018, constitutes 133 days and that he is therefore entitled to an additional day 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. Lanier-Cotton 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 Lanier-Cotton to file a postconviction motion is extended through May 10, 2021. See WIS. STAT. RULE 809.82(2)(a).

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*