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DISTRICT III

November 23, 2021

To:

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Circuit Court Judge
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Nicholas J. Nero
2973 W. Milky Way Ct.
Green Bay, WI 54313

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

2019AP1120-CRNM State of Wisconsin v. Nicholas J. Nero (L.C. # 2015CF339)

Before Stark, P.J.¹

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 Nicholas Nero filed a no-merit report concluding there is no basis to challenge Nero's convictions or sentences for criminal damage to property; operating a motor vehicle with a detectable amount of a restricted controlled substance, third offense; and operating

¹ This appeal is disposed of by one judge pursuant to WIS. STAT. § 752.31(2) (2019-20). All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

after revocation. Based on a review of the sentencing transcript, this court could not say that a challenge to the circuit court's exercise of discretion on sentencing would be wholly frivolous.

By order dated October 29, 2021, we directed counsel to consult with Nero and either: (1) submit a written statement from Nero indicating that he wished to waive any challenge to the court's exercise of discretion on sentencing and that he understands the consequences of his waiver; or (2) request that we dismiss this appeal in favor of an extension of time to file a postconviction motion in the circuit court.

Counsel now informs this court that after consultation with Nero, he does not wish to waive any challenge to the circuit court's sentencing discretion. Rather, Nero seeks to file a postconviction motion. We will therefore reject the no-merit report, dismiss the appeal and extend the time for filing a postconviction motion.

Upon the foregoing,

IT IS ORDERED that the no-merit report is rejected and the appeal is dismissed.

IT IS FURTHER ORDERED that the time for filing a postconviction motion is extended to January 10, 2022.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals