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DISTRICT IV

December 9, 2021

To:

Hon. Todd J. Hepler
Circuit Court Judge
Electronic Notice

Susan K. Raimer
Clerk of Circuit Court
Columbia County Courthouse
Electronic Notice

Winn S. Collins
Electronic Notice

Dylan Gehrtz
Electronic Notice

Jordan Lippert
Assistant District Attorney
Electronic Notice

John C. Duncan
8283 Daphne Street
Milwaukee, WI 53223

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

2020AP2034-CRNM State of Wisconsin v. John C. Duncan (L.C. # 2014CF300)

Before Blanchard, P.J., Kloppenburg, and Fitzpatrick, 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).

Attorney Dylan Gehrtz, appointed counsel for appellant John Duncan, has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2019-20)¹ and *Anders v. California*, 386 U.S. 738, 744 (1967). By prior order, this court asked counsel to address any potential issues arising from a January 17, 2020 motion hearing. This court noted that there was no transcript of the January 17, 2020 hearing in the record, but that the circuit

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

court docket entries indicated that, at the hearing, the court denied Duncan's pro se petition for sentence adjustment and awarded an additional thirty days of sentence credit. This court directed counsel to arrange for preparation of the transcript for the hearing and to provide the court with further input as to whether further proceedings as to any issues arising from the hearing would have arguable merit.

Attorney Gehrtz has now filed a "Stipulation To Abandon Post-Conviction Relief" signed by both counsel and Duncan. In the current filing, Duncan asserts that he no longer wishes to pursue postconviction relief in this case, that he understands he will not be able to seek that relief in the future, and that by dismissing this appeal, he will lose his right to appointed counsel to pursue postconviction relief.² This court construes the current filing as a notice of voluntary dismissal under WIS. STAT. RULE 809.18 and will dismiss the appeal. *See State v. Lee*, 197 Wis. 2d 959, 972, 542 N.W.2d 143 (1996) (this court must dismiss an appeal when an appellant files a notice of voluntary dismissal pursuant to RULE 809.18 before a decision has been issued).

Therefore,

² The current filing also states that Duncan understands that he still has an available remedy to seek sentence adjustment under WIS. STAT. § 973.195, "as either a new action with counsel appointed or the defendant will have to file his own motion." This court is unclear as to the purpose of including this sentence. This court takes no position as to whether Duncan may seek sentence adjustment in the future, either with or without counsel. *See State v. Stenklyft*, 2005 WI 71, ¶27 & n.11, 281 Wis. 2d 484, 697 N.W.2d 769 (an inmate is allowed to submit only one petition for sentence adjustment under § 973.195 for each sentence imposed under WIS. STAT. § 973.01, and "an inmate does not have a statutory right to appeal the denial of a petition"). However, nothing in the current filing conditions Duncan's decision to dismiss this appeal on Duncan's belief as to the future availability of a petition for sentence adjustment. Because the current filing states unequivocally that Duncan does not wish to pursue any postconviction relief in this matter, unrelated to whether he may seek sentence adjustment in the future, this court accepts the current filing as a notice of voluntary dismissal.

IT IS ORDERED that the no-merit report is rejected and the no-merit appeal is dismissed pursuant to WIS. STAT. RULE 809.18(1).

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

Sheila T. Reiff
Clerk of Court of Appeals