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**DISTRICT IV**

March 31, 2022

To:

Hon. Todd P. Wolf  
Circuit Court Judge  
Electronic Notice

Heather Bravener  
Clerk of Circuit Court  
Clark County Courthouse  
Electronic Notice

Katie Babe  
Electronic Notice

Melissa S. Inlow  
Electronic Notice

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Unity, WI 54488

Joseph N. Ehmann  
Regional Attorney Manager  
Wisconsin State Public Defenders  
P.O. Box 7862  
Madison, WI 53707-7862

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

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2021AP758-CRNM      State of Wisconsin v. Wayne L. Timm (L.C. # 2016CF29)

Before Kloppenburg, J.<sup>1</sup>

**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 Katie Babe, appointed appellate counsel for Wayne Timm, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Timm filed a response raising issues related to his suppression hearing and plea. By prior order, this court questioned whether, based on the assertions in the no-merit response, there would be

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2019-20). All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

arguable merit to a postconviction motion arguing that counsel was ineffective in connection with the suppression hearing or Timm's plea. *See Strickland v. Washington*, 466 U.S. 668, 687-694 (1984).

This court directed Attorney Babe to review the potential claims of ineffective assistance of counsel set forth in the order and to then provide this court with an update. Specifically, the order directed counsel that, if counsel determined that any issue Timm wishes to pursue has arguable merit, counsel should so inform this court by letter. The order explained that, if counsel filed such a letter, this court would dismiss this no-merit appeal and extend the time to file a postconviction motion. The order also stated that, if counsel concluded that the issues identified in this court's order that Timm wishes to pursue lack arguable merit, then counsel was required to explain her conclusions in a supplemental no-merit report.

Attorney Babe has now filed a letter stating only that Timm wishes to dismiss the no-merit appeal and return to the circuit court to seek relief. Because counsel has filed the letter contemplated by this court's order if she determined that an issue Timm wishes to pursue has arguable merit, rather than a supplemental no-merit report, I accept counsel's letter as her position that there is at least one non-frivolous issue to pursue in further proceedings. I note that nothing in counsel's letter complies with a request for counsel to withdraw so that a defendant may proceed pro se, as opposed to the options provided in this court's prior order.

Therefore,

IT IS ORDERED that the no-merit report is rejected and this no-merit appeal is dismissed. Attorney Katie Babe, or successor counsel appointed by the state public defender,

shall continue to represent the defendant in further postconviction proceedings. The SPD shall decide within thirty days of the date of this order whether it will appoint successor counsel.

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

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*