



OFFICE OF THE CLERK  
**WISCONSIN COURT OF APPEALS**

110 EAST MAIN STREET, SUITE 215  
P.O. BOX 1688  
MADISON, WISCONSIN 53701-1688  
Telephone (608) 266-1880  
TTY: (800) 947-3529  
Facsimile (608) 267-0640  
Web Site: [www.wicourts.gov](http://www.wicourts.gov)

**DISTRICT I**

July 5, 2022

To:

Hon. Janet C. Protasiewicz  
Circuit Court Judge  
Electronic Notice

George Christenson  
Clerk of Circuit Court  
Milwaukee County  
Electronic Notice

John D. Flynn  
Electronic Notice

Dustin C. Haskell  
Electronic Notice

Winn S. Collins  
Electronic Notice

Ronald N. Ziedman, Jr. 446110  
Oshkosh Correctional Institution  
P.O. Box 3530  
Oshkosh, WI 54903

Joseph Ehmann  
Regional Attorney Manager  
Office of the State Public Defender  
P.O. Box 7862  
Madison, WI 53707-7862

Andrea Taylor Cornwall  
Asst. State Public Defender  
735 N. Water St., Ste. 912  
Milwaukee, WI 53202

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

---

2021AP1228-CRNM      State of Wisconsin v. Ronald N. Ziedman, Jr. (L.C. #2019CF2620)

Before Brash, C.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).**

Ronald N. Ziedman, Jr., by Attorney Dustin C. Haskell, is pursuing an appeal under the no-merit procedures set forth in WIS. STAT. RULE 809.32 (2019-20).<sup>1</sup> Attorney Haskell filed a

---

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

no-merit report and a supplemental no-merit report, and Ziedman submitted responses and additional correspondence. Upon review of the record, the no-merit reports, and the other materials submitted to us, we conclude that Ziedman could pursue a claim for resentencing that would not be frivolous. Accordingly, we reject the no-merit reports, dismiss this appeal without prejudice, and extend the time for Ziedman to file a postconviction motion or notice of appeal on the merits.

Ziedman pled guilty to three crimes as a habitual offender: felony offenses of second-degree recklessly endangering safety and substantial battery; and a misdemeanor charge of operating a motor vehicle while intoxicated as a second offense and with a child in the vehicle. As relevant here, Ziedman faced two years of imprisonment and \$2,200 fine upon conviction of the misdemeanor. *See* WIS. STAT. §§ 346.63(1)(a), 346.65(2)(am)2., (2)(f)2., 939.62(1)(a). The circuit court imposed an eighteen-month jail sentence. The circuit court ordered Ziedman to serve that sentence consecutively to the aggregate fourteen-and-a-half-year term of imprisonment imposed for the two felonies.

The Department of Corrections subsequently requested a review of Ziedman's eighteen-month jail sentence for the misdemeanor matter, questioning whether such a sentence must be a bifurcated prison sentence pursuant to WIS. STAT. § 973.01(1) and WIS. STAT. § 973.02. The circuit court entered an order without a hearing, commuting Ziedman's sentence on the misdemeanor matter to one year in the House of Corrections.

Attorney Haskell states in the no-merit reports that Ziedman does not have an arguably meritorious claim for a resentencing hearing. In support, Attorney Haskell directs our attention to *State v. Holloway*, 202 Wis. 2d 694, 699-700, 551 N.W.2d 841 (Ct. App. 1996). There, we

determined that a circuit court has discretion either to commute an excessive sentence without more under WIS. STAT. § 973.13, or to resentence the defendant if the circuit court concludes that commutation of the excessive sentence would undermine the sentencing court’s intent. Based on *Holloway*, Attorney Haskell concludes: “the circuit court determined that the appropriate remedy for the illegal sentence it imposed for OWI (2nd) was to commute the sentence.... Ziedman cannot show that the circuit court erroneously exercised its discretion in determining the proper remedy for the erroneous sentence.”

Appellate counsel’s discussion of *Holloway* does not satisfy us that further proceedings would be wholly frivolous. *Holloway* involves the application of WIS. STAT. § 973.13, which provides for commutation of an excessive sentence. Ziedman, however, did not receive a sentence that exceeded the statutory maximum sentence. His eighteen-month sentence was less than the maximum twenty-four-month sentence that he faced. We therefore conclude that it would not be frivolous to argue that Ziedman’s case is distinguishable from *Holloway*. See *State v. Finley*, 2016 WI 63, ¶74, 370 Wis. 2d 402, 882 N.W.2d 761 (discussing the application of § 973.13). Moreover, as Attorney Haskell acknowledges, Ziedman’s original sentence was illegal. The normal remedy for an illegal sentence is resentencing. See *State v. Upchurch*, 101 Wis. 2d 329, 336, 305 N.W.2d 57 (1981). Accordingly, we conclude that it would not be frivolous to argue that Ziedman is entitled to resentencing here.

When resolving an appeal under WIS. STAT. RULE 809.32, the question is whether a potential issue would be “wholly frivolous.” See *State v. Parent*, 2006 WI 132, ¶20, 298 Wis. 2d 63, 725 N.W.2d 915 (quoting *Anders v. California*, 386 U.S. 738, 744 (1967)). The test is not whether the lawyer should expect the argument to prevail. See SCR 20:3.1, cmt. 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). Here, it appears that Ziedman could pursue a claim that would not be frivolous. We emphasize that we do not reach any conclusion that Ziedman would or should prevail, only that the record and the submissions reflect that pursuit of a claim on the merits would not be frivolous within the meaning of RULE 809.32, and *Anders*.

Because we cannot conclude that further proceedings would be wholly frivolous, we must reject the no-report report filed in this case. We add that our decision does not mean we have reached a conclusion in regard to the arguable merit of any other potential issue in the case. Ziedman 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 this matter is referred to the Office of the State Public Defender to consider appointment of new counsel for Ziedman, any such appointment to be made within forty-five days after this order.

IT IS FURTHER ORDERED that the State Public Defender's Office shall notify this court within five days after either a new lawyer is appointed for Ziedman or the State Public Defender determines that new counsel will not be appointed.

IT IS FURTHER ORDERED that the deadline for Ziedman to file a postconviction motion under WIS. STAT. RULE 809.30 is extended until sixty days after the date on which this

court receives notice from the State Public Defender's office advising either that it has appointed new counsel for Ziedman or that new counsel will not be appointed.

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

---

*Sheila T. Reiff*  
*Clerk of Court of Appeals*