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**DISTRICT II**

December 14, 2022

To:

Hon. Daniel J. Bissett  
Circuit Court Judge  
Electronic Notice

Tara Berry  
Clerk of Circuit Court  
Winnebago County Courthouse  
Electronic Notice

Angela Dawn Chodak  
Electronic Notice

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Christian A. Gossett  
Electronic Notice

Charles S. McNeal  
740 Kuborn Ave.  
Kimberly, WI 54136

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

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2020AP1165-CRNM      State of Wisconsin v. Charles S. McNeal (L.C. #2015CF455)

Before Neubauer, Grogan and Lazar, 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).**

Appointed counsel for Charles S. McNeal has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20)<sup>1</sup> and *Anders v. California*, 386 U.S. 738 (1967), concluding that there is no arguable basis to challenge McNeal's convictions on four counts of failure to pay child support for 120 or more consecutive days. McNeal was advised of his right to file a response and did not do so. For the reasons explained below, we now reject the no-merit report,

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

dismiss this appeal, and reinstate and extend the time to file a postconviction motion or notice of appeal.

Although not addressed in the no-merit report, our independent review of the record identified a potential issue regarding one of the four counts of failure to pay support. By order dated October 18, 2022, we drew counsel's attention to this issue. We noted that the amended information, the jury instructions, and the jury verdict form all stated that the relevant time period for Count 2 was September 14, 2014, to January 2, 2015, a time period less than 120 days. We directed counsel to review this potential issue, to consult with McNeal, and to either: (1) file a supplemental no-merit report if counsel concluded that there is no issue of arguable merit; (2) request relief from this court as appropriate if counsel concluded that there is an issue of arguable merit and McNeal wished to pursue the issue; or (3) inform this court by letter if counsel concluded that there is an issue of arguable merit but McNeal did not wish to pursue the issue.

On November 15, 2022, counsel filed correspondence in which counsel informed this court that she was experiencing difficulties making contact with McNeal. Counsel requested an extension of time to further respond to this court's order. We granted that request and instructed counsel that any future extension request based on difficulties making contact with McNeal should include details explaining counsel's efforts to make contact.

Counsel has now filed a motion to dismiss this no-merit appeal and to reinstate and extend the time to file a postconviction motion or notice of appeal. The motion includes additional details regarding counsel's efforts to locate and contact McNeal. Counsel states that she has concluded that there is merit to challenging Count 2, but has been unable to consult with

McNeal because she has so far been unable to locate or contact him. Counsel states that letters sent to McNeal at an address at which counsel had previously corresponded with McNeal successfully have been returned. Counsel also states that the phone number she had for McNeal has been disconnected. Counsel further states that she has been unable to locate McNeal or to find updated contact information for McNeal through recent searches of the VINELink system for jail inmates, the department of corrections' offender locator system, online court records, and other web sites. Counsel states that if this court extends the time to file a postconviction motion or notice of appeal, and if counsel is able to make contact with McNeal, counsel would make the appropriate filing if McNeal wishes to pursue relief.

Given counsel's conclusion that there is an issue of arguable merit, and lacking confirmation from McNeal that he does not want to pursue the issue, we cannot accept the no-merit report or conclude that further postconviction proceedings would lack arguable merit. Accordingly, we reject the no-merit report and dismiss this no-merit appeal. We also conclude that counsel has shown good cause to reinstate and extend the time to file a postconviction motion or notice of appeal.<sup>2</sup>

Therefore,

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

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.

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<sup>2</sup> Counsel requests an extension of thirty days from the date of dismissal, but we conclude that sixty days is more appropriate, particularly considering that the next thirty days include multiple holidays.

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*