



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

DISTRICT IV

March 7, 2024

To:

Hon. Ellen K. Berz
Circuit Court Judge
Electronic Notice

Jeff Okazaki
Clerk of Circuit Court
Dane County Courthouse
Electronic Notice

Marcella De Peters
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

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

Mathew D. Webb 702358
Wisconsin Resource Center
P.O. Box 220
Winnebago, WI 54985-0220

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

2022AP1850-CRNM State of Wisconsin v. Mathew D. Webb (L.C. # 2020CF2904)

Before Kloppenburg, P.J., Blanchard, and Taylor, 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 Marcella De Peters, appointed counsel for Mathew Webb, has filed a no-merit report seeking to withdraw as appellate counsel pursuant to WIS. STAT. RULE 809.32 (2021-22)¹ and *Anders v. California*, 386 U.S. 738 (1967). For the reasons explained below, we reject the

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

no-merit report, dismiss the no-merit appeal, and extend the time to file a postconviction motion. We also deny a separate motion to withdraw that counsel has now filed.

Webb was charged with attempted first-degree intentional homicide based on an incident in which he allegedly stabbed one of his roommates after a disagreement relating to the placement of furniture. Before Webb was appointed trial counsel, the State raised the issue of his competency. An examining psychiatrist filed a report concluding that Webb was competent to proceed. After a court commissioner held a limited proceeding relating to Webb's competence, Webb was appointed counsel and pled guilty to a reduced charge of first-degree reckless injury pursuant to a plea agreement. The circuit court sentenced Webb to a term of imprisonment consisting of twelve years of initial confinement and ten years of extended supervision.

Upon an initial review of the record, this court ordered further input from appellate counsel on the potential issue of whether Webb could seek plea withdrawal because he lacked counsel during the proceeding on his competency. In response to this court's order, appellate counsel filed a supplemental no-merit report in which counsel continued to maintain that there is no issue of arguable merit. In an order dated January 19, 2024, this court again ordered further input from counsel. That order explained that counsel's supplemental no-merit report raised additional potential issues not previously identified, including whether there was a lack of compliance with the applicable competency statute, WIS. STAT. § 971.14.

In response to this court's January 19, 2024 order, appellate counsel filed a motion to withdraw. The motion indicates that Webb was sent a copy. In the motion, counsel states that she now believes that Webb has arguable grounds to challenge his conviction, but that he has

declined her attempts to communicate with him about his appeal. Counsel states that she does not believe that she can pursue postconviction relief without Webb's authorization, primarily because plea withdrawal could expose him to a greater sentence. Counsel states that she believes that her only choice at this point is to move to withdraw.

The State Public Defender (SPD) has filed a response to counsel's motion to withdraw. The response indicates that a copy was sent to Webb. The SPD states that Webb's appeal is no longer a no-merit appeal given counsel's current assessment that his case involves an issue of arguable merit. The SPD also informs this court that it will not appoint successor counsel if the court grants counsel's motion to withdraw. The SPD asks this court to advise Webb that he will be forfeiting his right to SPD representation if he does not inform the court whether he wants to proceed with current counsel on the grounds identified.

Because counsel now agrees that Webb's case involves one or more issues with arguable merit, we reject the no-merit report and dismiss the no-merit appeal. However, instead of granting counsel's separate motion to withdraw, we deny that motion and instead extend the time to file a postconviction motion seeking plea withdrawal or other appropriate postconviction relief. It may be that Webb will yet communicate with counsel and provide counsel with direction once he is aware of this court's opinion rejecting the no-merit report and the SPD's stated intention not to appoint successor counsel if current counsel is allowed to withdraw. We

urge current counsel to attempt further communication with Webb regarding these latest developments and whether he wishes to pursue postconviction relief.²

If Webb continues to decline to communicate with counsel going forward, counsel may file a motion to withdraw in the circuit court. *See* WIS. STAT. RULE 809.30(4)(a). The circuit court will be in a better position than this court to make any factual determinations relating to whether Webb has thereby forfeited his right to SPD representation.

Therefore,

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

IT IS FURTHER ORDERED that the motion to withdraw as counsel is denied.

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

² Consistent with this court's general practice in no-merit appeals, the court is sending a copy of this opinion to counsel and to Webb directly. We urge counsel to send an additional copy of the opinion to Webb because we are uncertain whether Webb will accept the copy sent directly from the court. As counsel points out, this court's records show that the copy of the January 19, 2024 order sent directly to Webb from the court was returned as "refused." However, prior orders sent to Webb directly from the court were not returned as refused. Counsel has not asserted that Webb has refused mail sent by counsel.

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

Samuel A. Christensen
Clerk of Court of Appeals