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DISTRICT I

May 22, 2013

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

2012AP1990-CRNM State of Wisconsin v. Nicole M. Filbrandt
2012AP1991-CRNM (L.C. #2009CM4049 and 2010CF1163)

Before Curley, P.J.

By order dated May 9, 2013, this court directed Attorney Thomas J. Erickson to file a supplemental no-merit report on behalf of Nicole M. Filbrandt. The court, upon its independent review of the record, identified a potential issue of arguable merit relating to the imposition of a DNA surcharge in Milwaukee County Circuit Court Case Nos. 2009CM4049 and 2010CF1163. Counsel did not address this specific issue in his original no-merit report; consequently, we directed him to do so in a supplemental report. We indicated that in the alternative, he could file a motion seeking to dismiss the no-merit appeal and to extend the deadline for filing a postconviction motion in order to address the potential issue.

On May 20, 2013, Attorney Erickson filed a motion to dismiss the no-merit appeal and extend the deadline for filing a postconviction motion. The motion indicates that Filbrandt would like to pursue an opportunity to be heard on the issue of the imposition of the DNA surcharge. Because a no-merit report is only appropriate if counsel is convinced that an appeal would be wholly frivolous, *McCoy v. Court of Appeals*, 486 U.S. 429, 437 (1988), this court will grant the motion.

Upon the foregoing,

IT IS ORDERED that the no-merit report in appeal Nos. 2012AP1990-CRNM and 2012AP1991-CRNM is rejected and the appeal is dismissed without prejudice.

IT IS FURTHER ORDERED that the deadline for filing a postconviction motion or notice of appeal in Milwaukee County Circuit Court Case Nos. 2009CM4049 and 2010CF1163 is extended to June 21, 2013. *See* WIS. STAT. RULE 809.82(2)(a) (2011-12).

Diane M. Fremgen
Clerk of Court of Appeals