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DISTRICT IV

October 7, 2016

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

2015AP1127-CRNM State of Wisconsin v. Brian D. Frazier (L.C. # 2011CF489)

Before Kloppenburg, P.J., Lundsten and Blanchard, JJ.

Appellant Brian Frazier moves for reconsideration of this court's denial of his motion to dismiss his no-merit appeal without prejudice and reinstate the time for him to file a postconviction motion under WIS. STAT. RULE 809.30.

We denied Frazier's motion on the grounds that Frazier had already filed one postconviction motion with the assistance of counsel, upon which he was granted a hearing, and that reinstating and extending the time for Frazier to file a postconviction motion would not remove the bar on filing successive postconviction motions.

Counsel now provides this court with additional information about the issue he seeks to raise, asserting that both he and prior counsel failed to notice that Frazier had an arguably meritorious basis for a suppression motion based upon the failure of police to provide Frazier with *Miranda* warnings.

We observe that, given the procedural posture of the case, Frazier would need to successfully prosecute a claim of ineffective assistance of postconviction counsel in order to provide a “sufficient reason” for his failure to raise his current claim in his original postconviction motion. Based upon counsel’s representations, it appears that Frazier intends to pursue that course of action. We will grant the motion for reconsideration to allow him to do so within the framework of WIS. STAT. RULE 809.30.

Therefore,

IT IS ORDERED that the motion for reconsideration is granted and this no-merit appeal is dismissed without prejudice to allow appellant Brian Frazier to raise an additional postconviction issue, conditioned on a claim of ineffective assistance of postconviction counsel.

IT IS FURTHER ORDERED that the time for Frazier to file a postconviction motion under WIS. STAT. RULE 809.30(2)(h) is extended to November 18, 2016.

Diane M. Fremgen
Clerk of Court of Appeals