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DISTRICT II

July 31, 2026

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

2025AP2769-CRNM State of Wisconsin v. Timothy J.J.D. Lilley (L.C. #2023CF170)

Before Neubauer, P.J., Gundrum, and Grogan, 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).

Timothy J.J.D. Lilley appeals from a judgment convicting him on one count of possession with intent to deliver methamphetamines as a repeater. Appellate counsel, Angela D. Chodak, submitted a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and

WIS. STAT. RULE 809.32 (2023-24).¹ She also filed a supplemental report pursuant to this court’s order dated June 4, 2026. Lilley did not respond to the original no-merit report, but he did respond to counsel’s supplement. Upon our independent review of the record, counsel’s reports, and Lilley’s response, we conclude that at least one arguably meritorious issue exists. We therefore reject the no-merit report, dismiss this appeal without prejudice, and extend the time for Lilley to file a postconviction motion.

Lilley was arrested following a traffic stop initiated for a “defective taillight” because methamphetamine was found in his vehicle after a drug-sniffing dog was called to the stop. However, vehicles are only required to maintain tail lamps in “good working order,” which does not necessarily require every bulb in the lamp to be lit. *See* WIS. STAT. § 347.13(1); *see also State v. Brown*, 2014 WI 69, ¶¶3, 43, 355 Wis. 2d 668, 850 N.W.2d 66. In addition, a routine traffic stop becomes unlawful if it is prolonged beyond the time reasonably required to complete the mission; authority for the seizure ends when tasks tied to the traffic infraction are completed. *See State v. Davis*, 2021 WI App 65, ¶20, 399 Wis. 2d 354, 965 N.W.2d 84; *see also Rodriguez v. United States*, 575 U.S. 348, 354 (2015). Thus, we ordered counsel to file a supplemental no-merit report exploring: (1) whether Lilley could pursue an arguably meritorious claim that the traffic stop in this case was not supported by reasonable suspicion, and (2) whether, even if the stop was proper, there was an arguably meritorious claim that the traffic stop was unlawfully prolonged.

¹ All references to the Wisconsin Statutes are to the 2023-24 version.

The supplemental report indicates that trial counsel considered the legality of the stop, but Lilley did not want to litigate it and in fact expressed a desire to “move the case along as quickly as possible.” The supplemental report further notes that trial counsel’s file does not expressly mention anything about the length of the stop, but the file “show[s] the dates of the discussion with Mr. Lilley and his desire not to pursue litigation,” which appellate counsel says was consistent with her discussions with Lilley.

In his response, Lilley tells us that he “vehemently contest[s] counsel’s reading of the record” and suggests that he was not adequately advised by trial counsel regarding potential issues with the stop. He argues that telling counsel he wanted to keep the case moving is not the same as affirmatively waiving legal challenges, and he asks us to order the production of trial counsel’s notes so this court can determine whether trial counsel properly advised Lilley of those issues and whether Lilley knowingly waived them. Implicit in Lilley’s response is an assertion that he did not intend to waive the aforementioned challenges and that he would have litigated them if trial counsel had provided proper advice.

When resolving an appeal under WIS. STAT. RULE 809.32, the question is whether a potential issue would be “wholly frivolous[.]” *State v. Parent*, 2006 WI 132, ¶20, 298 Wis. 2d 63, 725 N.W.2d 915 (citation omitted). That is, 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 of Wis., Dist. 1*, 486 U.S. 429, 436 (1988). The test is not whether the lawyer should expect the argument to prevail. See SCR 20:3.1, cmt. [2] (action is not frivolous even though the lawyer believes his or her client’s position will not ultimately prevail).

Based on our review of the record, we are not persuaded that it would be wholly frivolous to raise challenges to the reasonable suspicion for, and length of, the traffic stop. To the extent that Lilley may be said to have waived those issues based on consultations with trial counsel, the allegations in his response indicate that it would also not be wholly frivolous to raise some form of ineffective-assistance claim against trial counsel relative to issues with the stop. Claims of ineffective trial counsel must be preserved for appellate review with a postconviction motion. See *State ex rel. Rothering v. McCaughtry*, 205 Wis. 2d 675, 677-78, 556 N.W.2d 136 (1996).

Because we cannot conclude that further proceedings in this matter would be wholly frivolous, we must reject the no-merit report in this case. See *McCoy*, 486 U.S. at 438-49. We emphasize, however, that we do not reach any conclusion about whether Lilley would or should prevail on the identified issues once they are raised.

Upon the foregoing,

IT IS ORDERED that the no-merit report in this appeal is rejected and the appeal is dismissed without prejudice.

IT IS FURTHER ORDERED that the deadline for Lilley to file a postconviction motion or notice of appeal is extended to 60 days after the date of this order. See WIS. STAT. RULE 809.82(2)(a).

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

Samuel A. Christensen
Clerk of Court of Appeals