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DISTRICT II

July 24, 2019

To:

Hon. Emily S. Mueller
Circuit Court Judge
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You are hereby notified that the Court has entered the following opinion and order:

2018AP1661-CRNM State of Wisconsin v. Sammy Lee, III (L.C. #2016CF322)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

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).

The State Public Defender appointed Attorney Dennis Schertz to represent Sammy Lee III in this case. Attorney Schertz has filed a no-merit report pursuant to WIS. STAT. RULE 809.32, concluding that no grounds exist for challenging Lee's conviction for attempted first-degree homicide with a dangerous weapon, armed robbery, and attempted armed robbery with a

dangerous weapon. Lee has filed a lengthy response, largely challenging trial counsel's representation.

We question appointed counsel's decision not to file a postconviction motion or to seek postconviction DNA testing, especially given his fruitless efforts to contact trial counsel. Appellate counsel's concession in his supplemental report that he cannot be sure there would be no merit to postconviction relief gives us further pause.

Because the no-merit report is not sufficient for us to review the possible merits of an appeal, we reject it. Within sixty days from the date of this order, counsel must either (1) file a new no-merit report that adequately explains why there is no arguable merit to any of the issues that may be raised on appeal; (2) file a postconviction motion; or (3) file a brief on the merits of an appeal. Counsel shall notify this court should he decide to pursue a postconviction motion, in which case this appeal will be dismissed. Therefore,

IT IS ORDERED that the no-merit report is rejected.

IT IS FURTHER ORDERED that within sixty days of the date of this order, counsel shall either (1) file a new no-merit report that adequately explains why there is no arguable merit to any of the issues that may be raised on appeal; (2) file a postconviction motion; or (3) file a brief on the merits of an appeal. Counsel shall notify this court, should he decide to pursue a postconviction motion, in which case this appeal will be dismissed.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals