



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

August 14, 2025

To:

Hon. Mark L. Goodman
Circuit Court Judge
Electronic Notice

John Blimling
Electronic Notice

Laura Endres
Clerk of Circuit Court
Monroe County Courthouse
Electronic Notice

Dennis Schertz
Electronic Notice

Marcus Wayne Anderson 681080
Wisconsin Secure Program Facility
P.O. Box 1000
Boscobel, WI 53805-1000

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

2023AP2057-CRNM State of Wisconsin v. Marcus Wayne Anderson
(L.C. # 2019CF353)

Before Graham, 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).

Appointed counsel for Marcus Anderson filed a no-merit report under WIS. STAT. RULE 809.32 (2023-24).¹ After an independent review, we have identified one issue with arguable merit. Therefore, we reject the no-merit report, dismiss the appeal without prejudice, and extend the time to file a postconviction motion.

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

Before we discuss the issue with arguable merit, we address the concerns that Anderson has raised about his current attorney. In January 2025, while this appeal was pending, Anderson filed a motion in this court to disqualify current counsel and appoint new appellate counsel. We accepted the motion as an additional response to the no-merit report. For reasons we now explain, we conclude that Anderson has not shown a basis to disqualify current counsel.

Anderson argues that current counsel has a conflict of interest because counsel previously represented Anderson's father. However, Anderson does not provide any specific facts about how that representation creates a conflict of interest, or any law that makes the mere fact of a family relationship between two clients a basis for disqualification.

Anderson asserts that counsel spent time out of state and did not conduct in-person, telephone, or virtual visits with Anderson. These facts are not a basis for disqualification.

Anderson contends that his current counsel believed his trial counsel's statements over Anderson's statements. However, Anderson does not provide information about any specific statements that might be relevant to his case.

Anderson states that counsel failed to retrieve exculpatory evidence or talk to witnesses, but again, he provides no specific information that might show a basis to disqualify counsel.

We now turn to the issue that we have concluded has arguable merit. This issue pertains to a restitution hearing at which Anderson was not represented by counsel. The issue is whether Anderson had a right to counsel and did not waive his right to counsel.

By way of background, the circuit court held an evidentiary hearing on restitution approximately six months after sentencing. At the beginning of the hearing, the court observed that Anderson was not represented by counsel, but the court did not ask why not, nor did it ask

whether Anderson wanted counsel. Then, part way through the hearing, the court observed that Anderson had “appellate counsel” at that time and that “apparently appellate counsel is not participating in this.” The court made no further inquiry.

At the end of the hearing, when Anderson objected to an aspect of the hearing, the circuit court advised him to talk to his lawyer. Anderson responded, “[I]f my lawyer was involved in this hearing, we would know, but this hearing proceeded without my lawyer available,” and “it wasn’t supposed to be like this.” The court replied: “Well, this is not a criminal hearing, you’re not entitled to representation. This is a civil hearing.” There was no further discussion on that topic.

The no-merit report and supplemental no-merit reports do not discuss restitution or what happened at the restitution hearing. It is not frivolous to argue that Anderson had a right to counsel at the restitution hearing, which he did not knowingly, voluntarily, and intelligently waive. See *State v. Klessig*, 211 Wis. 2d 194, 204, 564 N.W.2d 716 (1997) (nonwaiver of counsel is presumed unless waiver is affirmatively shown to be knowing, intelligent, and voluntary). Therefore, we dismiss this appeal to allow counsel to raise this nonfrivolous issue.

Finally, Anderson filed a “motion to address” that asks this court not to publish this decision on Westlaw “due to security and safety reasons,” and states that if we are not persuaded to grant this relief by his motion, we should hold a hearing for further information. In addition, the motion asks that the motion itself be sealed. The motion does not state a sufficient factual or legal basis to keep either this decision or the motion sealed. We decline to hold a hearing. The statement below that the order will not be published refers to publication under WIS. STAT. RULE 809.23, meaning that the order will not become precedent. However, the order will still be available to the public through the usual channels.

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

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

IT IS FURTHER ORDERED that the “motion to address” is denied. The clerk of this court shall remove the temporary seal that is on the motion.

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

Samuel A. Christensen
Clerk of Court of Appeals