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**DISTRICT IV**

September 18, 2025

To:

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Circuit Court Judge  
Electronic Notice

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Clerk of Circuit Court  
Dane County Courthouse  
Electronic Notice

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Khari O. Sanford 713341  
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P.O. Box 19033  
Green Bay, WI 54307-9033

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

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2023AP2286-CRNM      State of Wisconsin v. Khari O. Sanford (L.C. # 2020CF886)

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).**

Attorney Michael Griesbach, appointed counsel for Khari Sanford, has filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32.<sup>1</sup> By prior order, this court explained that the court was unable to determine whether further proceedings would be wholly frivolous. We directed counsel to address whether there would be arguable merit to any argument based on: (1) the circuit court's admission of other acts evidence at trial, over Sanford's objections; (2) the particular ways in which the prosecution used other

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2023-24 version.

acts evidence at trial; or (3) the failure of defense counsel at trial to request a cautionary instruction.

Current counsel has now filed a supplemental no-merit report concluding that any potential issue related to the other acts evidence would be wholly frivolous. For the reasons we now explain, we are not persuaded that further proceedings would be wholly frivolous. Accordingly, we reject the no-merit report, dismiss this no-merit appeal, and extend the time to file a postconviction motion or notice of appeal.

Sanford was charged with two counts of first-degree intentional homicide based on the shooting deaths of the parents of Sanford's then-girlfriend, which occurred in the University of Wisconsin Arboretum when Sanford was 18 years old. Sanford was convicted of both counts following a six-day jury trial. The circuit court sentenced Sanford to two consecutive life sentences without the possibility of release to extended supervision.

Prior to trial, the State moved to admit other acts evidence, including multiple images of Sanford with firearms. See WIS. STAT. § 904.04(2)(a) (“[E]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith.”); *State v. Sullivan*, 216 Wis. 2d 768, 772-73, 576 N.W.2d 30 (setting forth test to determine whether other acts evidence is admissible because it is offered for a permissible purpose and not as character evidence). The circuit court allowed multiple images showing Sanford with guns to be admitted at trial, over Sanford's objection.

At the other acts evidence motion hearing, the parties presented lengthy arguments and the circuit court addressed which specific items of the disputed evidence would be allowed. Pertinent to our discussion here, the court addressed the admissibility of eight separate images showing Sanford with firearms. Defense counsel acknowledged to the court the possible

relevance of an image of Sanford with one gun that would have been capable of firing the type of ammunition relevant in this case, namely, .357-caliber rounds. But counsel argued that the “tipping point” at which the danger of unfair prejudice from the firearm image evidence would substantially outweigh its probative value would be when the jury was shown more than one of the images of Sanford with a gun. Further, counsel argued, the unfair prejudice would be amplified by the inclusion of six images of Sanford with guns that might not have been capable of firing .357-caliber rounds. The circuit court determined that all eight images were admissible as other acts evidence. The State introduced multiple images of Sanford with firearms in its case in chief at trial, including three of the other acts images of Sanford with guns that were not identifiable as capable of firing .357-caliber rounds. Defense counsel did not request that any limiting instruction be given to the jury regarding the other acts firearm image evidence, and the circuit court did not give any such instruction.

The no-merit report initially filed by counsel identified as a potential appellate issue the circuit court’s decision to allow the State to introduce other acts evidence at trial, but it did not include a substantive discussion on that topic. This court therefore directed counsel to specifically address whether there would be arguable merit to further proceedings based on the admission and use of other acts evidence at trial.

We conclude that, at a minimum, the supplemental no-merit report does not establish that it would be wholly frivolous to argue that the circuit court erred by admitting the other acts firearm image evidence.

Other-acts evidence is properly admitted if: (1) it is offered for a permissible purpose, such as opportunity or identity; (2) it is relevant; and (3) its probative value is not substantially outweighed by the danger of unfair prejudice. *Sullivan*, 216 Wis. 2d at 772-73. Evidence

presents a danger of unfair prejudice if it “has a tendency to influence the outcome by improper means or if it appeals to the jury’s sympathies, arouses its sense of horror, provokes its instinct to punish[,] or otherwise causes a jury to base its decision on something other than the established propositions in the case.” *Id.* at 789-90. “[T]he absence of a cautionary instruction can be considered in weighing the evidence’s danger of unfair prejudice against its probative value,” and “the absence of a curative or limiting instruction has been considered by the [appellate] court in finding that admission of other acts evidence constituted reversible error.” *State v. Payano*, 2009 WI 86, ¶100, 320 Wis. 2d 348, 768 N.W.2d 832 (quoted source omitted).

Here, the supplemental no-merit report does not establish that it would be wholly frivolous to argue that the circuit court erroneously exercised its discretion by admitting multiple items of other acts firearm image evidence. The supplemental no-merit report concludes that the court properly determined that the probative value of the firearm image evidence was not substantially outweighed by the danger of unfair prejudice because the court determined that each image either was or could be capable of firing .357-caliber rounds and that each image was taken within six months of the homicides.<sup>2</sup> However, the supplemental no-merit report does not address trial counsel’s argument that the danger of unfair prejudice from showing the jury multiple images of Sanford with firearms—and in particular, showing the jury images of Sanford with guns that could not be identified as being capable of firing .357-caliber rounds—substantially outweighed the probative value of that evidence. Moreover, the supplemental no-merit report does not take into account the lack of a cautionary instruction in that analysis. *See*

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<sup>2</sup> We note that a significant portion of the discussion in the supplemental no-merit report regarding the circuit court’s determinations as to relevance and the danger of unfair prejudice incorrectly attributes to the court arguments that were in fact made by the prosecution.

**Payano**, 320 Wis. 2d 348, ¶104 (“[T]he lack of a cautionary instruction may be the deciding factor in some cases of whether [other acts] evidence is admissible.”). We are not persuaded that it would be wholly frivolous to argue that the probative value of the additional images of Sanford with guns (including guns that may not have been capable of firing .357-caliber rounds) was substantially outweighed by the danger of unfair prejudice, taking into account the State’s use of the evidence at trial and the lack of a cautionary instruction to limit the jury’s consideration of the evidence. See *id.*, ¶¶99-104.

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. The test is not whether current counsel expects that the argument would 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). Rather, the question is whether the potential issue lacks a basis in fact or law to such a degree that it would be unethical for the lawyer to prosecute the appeal. See **McCoy v. Court of Appeals**, 486 U.S. 429, 436 (1988).

Although harmless error analysis may apply to defeat a defense argument, it is the State’s burden to prove that an error was harmless, and therefore the potential for a determination of harmless error is not a proper consideration at this stage of the proceedings. See **State v. Sherman**, 2008 WI App 57, ¶8, 310 Wis. 2d 248, 750 N.W.2d 500. A defendant may be entitled to advocacy of counsel in attempting to show that the State has not met its burden to prove harmless error.

In sum, it appears that Sanford could pursue at least one nonfrivolous argument. We emphasize that we do not reach any conclusion that such an argument would or should prevail.

We conclude only that counsel has not shown that such an argument would be frivolous within the meaning of WIS. STAT. RULE 809.32 and ***Anders***.

Because we cannot conclude that further proceedings would be wholly frivolous, we reject the no-merit report filed in this case. We add that our decision today does not mean that we have reached a conclusion in regard to the arguable merit of any potential issue in the case that is not addressed in this order. Sanford is not precluded from raising any issue in postconviction proceedings or on appeal that counsel may now believe or come to believe has merit.

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

IT IS FURTHER ORDERED that the time to file a postconviction motion or notice of appeal is extended to sixty days from the date of this order.

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

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*