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DISTRICT I

July 15, 2026

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

2024AP1984-CRNM State of Wisconsin v. Leland Bernard Hall (L.C. # 2019CF2770)

Before Donald, C.J., Geenen, and Petrashek, 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).

Leland Bernard Hall, by Attorney Leonard D. Kachinsky, is pursuing a no-merit appeal pursuant to *Anders v. California*, 386 U.S. 738 (1967) and WIS. STAT. RULE 809.32 (2023-24).¹
A jury found Hall guilty of possessing with intent to deliver at least one but not more than five

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

grams of cocaine, possessing narcotic drugs (fentanyl), and obstructing an officer. Attorney Kachinsky filed a no-merit report. This is the third no-merit appeal that Attorney Kachinsky has filed on Hall’s behalf. See **State v. Hall (Hall I)** No. 2022AP2147-CRNM, unpublished op. and order (WI App Apr. 4, 2023); **State v. Hall (Hall II)**, No. 2023AP1651-CRNM, unpublished op. and order (WI App Jul 22, 2024). We have again reviewed the record, and we have considered the no-merit report filed in this matter along with the no-merit report and supplemental no-merit report that Attorney Kachinsky filed in **Hall II**.² As we determined in **Hall II**, the record shows that Hall could pursue further postconviction proceedings that would not be wholly frivolous. Accordingly, we reject the no-merit report, dismiss this appeal without prejudice, and extend the time for Hall to file a postconviction motion or a notice of appeal on the merits.

Attorney Kachinsky filed the no-merit appeal in **Hall I** even though eight transcripts, representing a quarter of the proceedings held on the record, had not been prepared. **Id.**, No. 2022AP2147-CRNM at 2-3 & n.3. A no-merit appeal however, entails scrutiny of the entire record by both appointed counsel and this court. **State v. Tillman**, 2005 WI App 71, ¶17, 281 Wis. 2d 157, 696 N.W.2d 574. Accordingly, we rejected the no-merit appeal in **Hall I**.

We rejected the no-merit appeal in **Hall II** because we concluded that Hall could mount an arguably meritorious claim that his trial counsel was ineffective for failing to pursue a stipulation that the parties discussed on the record and appeared to anticipate entering before trial. **Id.**, No. 2023AP1651-CRNM at 4. A claim of ineffective assistance of counsel requires

² “Generally, a court may take judicial notice of its own records and proceedings for all proper purposes. This is particularly true when the records are part of an interrelated or connected case, especially where the issues, subject matter, or parties are the same or largely the same.” **Johnson v. Mielke**, 49 Wis. 2d 60, 75, 181 N.W.2d 503 (1970).

the defendant to show that counsel's performance was deficient and that the deficiency prejudiced the defendant. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). In *Hall II*, we described the facts of record supporting our determination that Hall's pursuit of such a claim would not be frivolous:

According to the criminal complaint, police were dispatched to a Milwaukee location in response to citizen complaints of shots fired. Hall was one of the people present, and when officers approached, he fled into the Milwaukee River. After he was arrested, police found a bottle containing suspected controlled substances.

Hall filed a motion in limine objecting to any evidence that: (1) police initially approached Hall when responding to an anonymous call about gunshots; (2) Hall resembled one of the alleged shooters; and (3) a dive team searched the Milwaukee River for a firearm and no firearm was found. At two pretrial conferences, the prosecutor noted his expectation that the parties would "work out" a stipulation to explain to the jury, without mentioning a firearm, that police lawfully arrived on the scene. At a third pretrial conference, however, the circuit court addressed the motion in limine without seeking additional argument. The circuit court ruled that the State could offer evidence that police arrived on the scene in response to complaints about gunfire and that Hall resembled one of the alleged shooters. At the conclusion of the circuit court's ruling, defense counsel advised that nothing further required discussion.

At trial, the State told the jury in opening statement that the case began because police were responding to complaints about "shots fired." The arresting officer testified about the "shots fired" complaints, stated several times that police were responding to "shots fired" calls when they saw Hall, and told the jury that Hall "matched the description" that one of the callers provided. The State discussed the complaints in closing argument, reiterating in multiple ways that the police encountered Hall because they were investigating complaints of gunfire.

Id. at 2-3.

Next, we explained that we had directed Attorney Kachinsky to file a supplemental no-merit report addressing why Hall could not raise an arguably meritorious claim that his trial counsel was ineffective for failing to pursue a stipulation. We also set forth Attorney

Kachinsky's response: he had "communicated with trial counsel as to whether further efforts were made off the record with the State to obtain a stipulation. Trial counsel could not recall any." *Id.* at 3 (brackets omitted).

Upon review of the record, the no-merit report and the supplemental no-merit report, we concluded in *Hall II* that "it would not be frivolous for Hall to claim that trial counsel performed deficiently by failing to pursue a stipulation that the State appeared willing to enter[.]" We also concluded "that it would not be frivolous for Hall to claim that he was prejudiced by trial counsel's failure to pursue a stipulation that would have avoided introduction of evidence connecting him to complaints about gunfire." *Id.* at 4. We therefore rejected the no-merit appeal and established a deadline for Hall to file a postconviction motion. See *McCoy v. Court of Appeals of Wis., Dist. 1*, 486 U.S. 429, 444 (1988) (explaining that "if the court concludes that there are nonfrivolous issues to be raised, it must ... direct [appointed] counsel to prepare an advocate's brief before deciding the merits").

Following remittitur, Attorney Kachinsky filed a postconviction motion that did not raise a claim of ineffective assistance of trial counsel. Instead, the postconviction motion raised the single claim that "the trial court erroneously denied Hall's motion *in limine* regarding the shots fired complaint." Attorney Kachinsky pursued this motion notwithstanding his assertion in his *Hall II* no-merit report that "it was not error to admit the limited testimony into evidence." The motion was not accompanied by an affidavit or any other evidentiary material that might explain the changed assessment.

A successor circuit court considered Hall's postconviction motion. The successor court denied the motion on the existing record without calling for a response or holding a hearing.

Attorney Kachinsky promptly filed a third no-merit notice of appeal and then a new no-merit report. In regard to the potential claim of ineffective assistance of counsel for failing to pursue an agreement to exclude the “shots fired” evidence, Attorney Kachinsky stated:

[T]here was not reason to believe that the State would agree to anything less favorable to the State than the trial court’s ruling on the motion in limine. It is frivolous to argue that [trial counsel] was deficient for not pursuing further discussions with the State that probably would not be successful given the position that the State took on the evidence.

The record now before us, however, does not include any evidence that was not before us when we considered the appeal in *Hall II*. Accordingly, we remain persuaded that it would not be frivolous for Hall to raise a claim that his trial counsel was ineffective for failing to pursue a stipulation that the State appeared willing to enter and that would have excluded evidence connecting him to gunfire. We remind Attorney Kachinsky that “counsel may not be the final judge of frivolousness.” *Betts v. Litscher*, 241 F.3d 594, 597 (7th Cir. 2001).

Because we remain persuaded that a claim of ineffective assistance of counsel in this case would not be wholly frivolous, we reject the current no-merit appeal. As in *Hall II*, we emphasize that we do not reach any conclusion that Hall would or should prevail, only that the totality of the materials before us reflects that pursuing the claim on the merits would not be frivolous within the meaning of WIS. STAT. RULE 809.32, and *Anders*.

We add, however, that we are perplexed by Attorney Kachinsky’s failure to pursue the nonfrivolous claim that we identified in *Hall II*, and, under the totality of the circumstances, we are not confident that he will now pursue that claim. We therefore encourage the State Public Defender to give careful consideration to whether new counsel should be appointed. See *McCoy*, 486 U.S. at 444.

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

IT IS FURTHER ORDERED that this matter is referred to the Office of the State Public Defender to consider appointment of new counsel for Hall, with any such appointment to be made within forty-five days after this order.

IT IS FURTHER ORDERED that the State Public Defender's Office shall notify this court within five days after either a new lawyer is appointed for Hall or the State Public Defender determines that new counsel will not be appointed.

IT IS FURTHER ORDERED that the deadline for Hall to file a postconviction motion or notice of appeal under WIS. STAT. RULE 809.30 is extended until sixty days after the date on which this court receives notice from the State Public Defender's office advising either that it has appointed new counsel for Hall or that new counsel will not be appointed.

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

Samuel A. Christensen
Clerk of Court of Appeals