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DISTRICT I

--Amended 7/7/15--
July 2, 2015

To:

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

2014AP2674-NM

In the matter of the mental commitment of Eric J.:
Milwaukee County v. Eric J. (L.C. #2014ME1025)

Before Curley, P.J.

Eric J. appeals from an order for involuntary commitment for six months.¹ *See* WIS. STAT. § 51.20 (2013-14).² We also interpret his notice of appeal to include an appeal from an order for involuntary medication and treatment.³ Eric J.'s appellate counsel, Attorney Donna

¹ The six-month commitment order has expired. However, the appeal is not moot because the County petitioned for extension of the commitment, and on November 14, 2014, the extension was granted for an additional twelve months.

² All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

³ The no-merit report discusses the order for involuntary administration of psychotropic medications, which was issued on the same day as the commitment order.

Odrzywolski, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32. Eric J. has not filed a response. On March 19, 2015, we directed counsel to file a supplemental report addressing several issues, which she subsequently filed. On May 28, 2015, we directed counsel to file a second supplemental report addressing several issues. We added: “If after examining these issues counsel identifies an issue of arguable merit, then rather than filing a supplemental no-merit report as outlined above, counsel should voluntarily dismiss this appeal and request an extension of time in which to file a merit appeal or take other appropriate action.”

On July 1, 2015, counsel filed a letter with this court indicating that she had reviewed this court’s order and asking this court to “reject the no merit report, dismiss the appeal, and remand to the Circuit Court with an order directing that successor counsel be appointed and granted 60 days from appointment to file a notice of appeal or post[commitment] motion in this matter.” We infer from counsel’s letter that she has identified an issue of arguable merit. Because a no-merit report is only appropriate if counsel is convinced that an appeal would be wholly frivolous, *McCoy v. Court of Appeals*, 486 U.S. 429, 437 (1988), this court will reject the no-merit report and dismiss the appeal without prejudice.

However, counsel has not explained the need for the appointment of successor counsel. We decline to order the appointment of successor counsel without some basis for doing so. We encourage counsel to address any concerns with her continuing representation to the State Public Defender’s Office, which we have copied on this order.

Upon the foregoing reasons,

IT IS ORDERED that the no-merit report in appeal No. 2014AP2674-NM is rejected and the appeal is dismissed without prejudice.

IT IS FURTHER ORDERED that the deadline for Attorney Donna Odrzywolski to file a notice of appeal or a post-commitment motion on Eric J.'s behalf is extended to sixty days from the date of this order. *See* WIS. STAT. RULE 809.82(2)(a) (2013-14).

Diane M. Fremgen
Clerk of Court of Appeals