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DISTRICT IV

December 27, 2024

To:

Hon. Josann M. Reynolds
Circuit Court Judge
Electronic Notice

Jeff Okazaki
Clerk of Circuit Court
Dane County Courthouse
Electronic Notice

Megan Elizabeth Lyneis
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

Corey D. Ruiz
Dane County Jail
115 W. Doty St.
Madison, WI 53703

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

2023AP792-CRNM	State of Wisconsin v. Corey D. Ruiz (L.C. # 2021CF769)
2023AP800-CRNM	State of Wisconsin v. Corey D. Ruiz (L.C. # 2020CF3169)

Before Graham, Nashold, 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 Megan Lyneis, appointed counsel for Corey Ruiz, has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2021-22);¹ *Anders v. California*, 386 U.S. 738, 744 (1967). Ruiz has filed a response raising several issues, including a claim that he is entitled to additional sentence credit.

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

By prior order, this court informed counsel that this court was unable to determine from the record, the no-merit report, and the response whether a postconviction motion for additional sentence credit would be wholly frivolous. This court directed counsel to file a response addressing the sentence credit issue Ruiz raised in his no-merit response. The order explained that, if counsel determined that further proceedings as to sentence credit would have arguable merit, counsel should so inform this court by letter, and this court would dismiss the no-merit appeal and extend the time to file a postconviction motion.

Counsel has now filed a response. Counsel states that she has determined that Ruiz is entitled to additional sentence credit. Counsel requests that this court place this no-merit appeal on hold to allow counsel to seek additional sentence credit in the circuit court. Counsel points out that the circuit court may address sentence credit while an appeal is pending. *See* WIS. STAT. § 808.075(4)(g)4.

Because appointed counsel has determined that there is at least one issue of arguable merit that may be pursued in postconviction proceedings, a no-merit appeal is no longer appropriate. *See McCoy v. Court of Appeals*, 486 U.S. 429, 437 (1988) (a no-merit proceeding is appropriate only if counsel is convinced that postconviction proceedings would be wholly frivolous). We therefore do not agree that it would be appropriate to place this no-merit appeal on hold while counsel pursues additional sentence credit, even though the circuit court has authority to address sentence credit while an appeal is pending. Rather, we determine that this no-merit appeal must be dismissed because there is at least one nonfrivolous issue to pursue.

Counsel informs this court that she has now filed a letter in the circuit court addressing sentence credit. This court will extend the time for counsel to file a postconviction motion, to

make timely the motion already filed and to allow counsel to file any additional necessary postconviction motion.

Therefore,

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

Samuel A. Christensen
Clerk of Court of Appeals