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Supreme Court of Wisconsin

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10-05-2023
CLERK OF WISCONSIN
SUPREME COURT

October 5, 2023

To:

Circuit Court Judge
Electronic Notice

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Anna Hodges
Clerk of Circuit Court
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Electronic Notice

Fred L. Davenport 613499
Columbia Correctional Institution
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Portage, WI 53901

Matt Borkovec
Electronic Notice

Katie York
Office of State Public Defender
PO Box 7923
Madison, WI 53707-7923

John D. Flynn
Electronic Notice

You are hereby notified that the Court, by its Clerk and Commissioners, has entered the following order:

No. 2021AP661-CR State v. Davenport, L.C.#2019CF2866

In a decision dated November 22, 2022, the court of appeals affirmed: (1) a judgment of conviction entered upon Fred L. Davenport's guilty plea to first-degree reckless homicide as a party to a crime; and (2) a circuit court order denying postconviction relief. Mr. Davenport was represented on appeal by appointed counsel, Attorney Matthew J. Borkovec. Attorney Borkovec filed a paper copy of a petition for review after the 30-day deadline for filing a petition for review. See Wis. Stat. §§ 808.10, 809.62(1m). By order of December 29, 2022, this court dismissed the petition for review as untimely, consistent with the Order and Amended Revised Interim Rule in effect at that time. See "In re Interim Court Rule Governing Electronic Filing in the Supreme Court," S. Ct. Order 19-02B and 20-07B, 2022 WI 62 (issued July 7, 2022, effective July 7, 2022), Amended Revised Interim Rule at 6 n.5 ("[A] petition for review that has not been accepted as part of the pilot project is not considered filed until a paper copy is physically received in the Clerk's office.") On December 29, 2022, remittitur occurred.

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On September 11, 2023, Mr. Davenport, pro se, filed a document titled "Petition For Reconsideration," in which he suggested, among other things, that Attorney Borkovec was ineffective for failing to file the petition for review in a timely matter. Mr. Davenport asked the court to "review on its merits the petition for review."

By order of September 14, 2023, this court required Attorney Borkovec to file a letter explaining his efforts to file a petition for review on Mr. Davenport's behalf. In a letter filed September 22, 2023, Attorney Borkovec acknowledged he was responsible for missing the filing deadline because he incorrectly thought the petition would be deemed timely given that he electronically filed the petition and placed the petition in the mail before the filing deadline.

Upon the foregoing,

IT IS ORDERED that Mr. Davenport's pro se September 11, 2023 filing is construed as a petition for writ of habeas corpus, see State ex rel. Schmelzer v. Murphy, 201 Wis. 2d 246, 548 N.W.2d 45 (1996);

IT IS FURTHER ORDERED that the petition for writ of habeas corpus is granted, and that, as relief, the petition for review filed by Attorney Borkovec is reinstated and deemed timely-filed;

IT IS FURTHER ORDERED that the plaintiff-respondent, State of Wisconsin, shall file its response within 20 days of the date of this order; and

IT IS FURTHER ORDERED that the clerk of the circuit court shall transmit the record of Case No. 2019CF2866 within 14 days of the date of this order.

Samuel A. Christensen
Clerk of Supreme Court