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September 3, 2019

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

No. 2018AP616-NM Waukesha County v. J.K., L.C.#2016ME555

On June 27, 2018, respondent-appellant-petitioner, J.K., through his appointed counsel, filed a petition for review under Wis. Stat. § 808.10 regarding a May 11, 2018 decision by the court of appeals. This appellate decision dismissed J.K.'s appeal of a March 14, 2017 circuit court order that extended J.K.'s commitment under Wis. Stat. Ch. 51. The court of appeals issued its decision after J.K.'s appointed counsel filed a no-merit notice of appeal, but before appointed counsel filed a no-merit report, and, necessarily, before J.K. had an opportunity to respond to any such report. In its decision, the court of appeals dismissed J.K.'s appeal as moot because: (1) the commitment order from which J.K. appealed had expired, and he was subject to commitment under a subsequently entered order; and (2) in the court of appeals' words, "a no-merit report is contemplated and it is unlikely that the appeal presents an issue which suggests that appellate review should be conducted despite mootness."

In his petition for review, J.K. asked this court to grant review to examine "[w]hether the court of appeals can summarily dismiss a no-merit appeal of a mental health commitment extension as moot when a subsequent extension is ordered, without requiring counsel to file a no-

merit report, without allowing the respondent to file a response, and without conducting a full examination of the entire record."

This court held J.K.'s petition for review in abeyance pending the disposition of Portage County v. J.W.K., No. 2017AP1574, a case that this court accepted for review on June 11, 2018. The court issued its decision in J.W.K. on May 21, 2019, and ordered the parties to submit filings discussing the impact, if any, of the J.W.K. decision on the issue presented for review.

In its court-ordered filing, petitioner-respondent, Waukesha County, asserts that J.W.K. confirms that J.K.'s appeal is moot. See id., 2019 WI 54, ¶¶28-31 (holding that an appeal challenging the sufficiency of the evidence supporting a recommitment order was mooted by the entry of a subsequent recommitment order).

In J.K.'s court-ordered filing, J.K.'s appointed counsel asserts that, while J.W.K. confirms that certain potential issues are moot, the court of appeals nevertheless erred by issuing its decision before counsel filed a no-merit report, before J.K. had an opportunity to respond to any such report, and without conducting an independent review of the record. See Wis. Stat. § (Rule) 809.32 and Anders v. California, 386 U.S. 738 (1967). Counsel for J.K. represents that "J.K. has not, and will not, consent to the closing of his case," and thus the court of appeals was required to allow the no-merit process to fully run its course. Counsel for J.K. maintains that the no-merit process might identify an appealable issue with arguable merit that is not governed by the J.W.K. decision or the mootness doctrine, generally.

J.K.'s appointed counsel is correct in asserting that the no-merit process described in Wis. Stat. § (Rule) 809.32 and Anders must be followed completely. A full completion of this process is necessary to protect a Chapter 51 patient's statutory right to counsel on appeal where appellate counsel believes that an appeal is frivolous. The no-merit procedure was not followed completely here. Accordingly,

IT IS ORDERED that the petition for review is granted;

IT IS FURTHER ORDERED that the May 11, 2018 decision of the court of appeals is summarily vacated and the matter is remanded to the court of appeals with directions to follow the no-merit procedure mandated by Anders v. California, 386 U.S. 738 (1967) and Wis. Stat. § (Rule) 809.32, including the consideration of a no-merit report and any response or supplement thereto, and an independent review of the record.

PATIENCE DRAKE ROGGENSACK, C.J., dissents.

Sheila T. Reiff
Clerk of Supreme Court