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DISTRICT III

November 7, 2023

To:

Hon. Elizabeth Rohl
Circuit Court Judge
Electronic Notice

Kerry Feuerhelm
Clerk of Circuit Court
Pierce County Courthouse
Electronic Notice

Jerome F. Buting
Electronic Notice

Patricia Sommer
Electronic Notice

Jennifer L. Vandermeuse
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You are hereby notified that the Court has entered the following opinion and order:

2022AP1121-CRNM State of Wisconsin v. Christopher Michael Kirchner
(L. C. No. 2019CF258)

Before Stark, P.J., Hruz and Gill, 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).

The State Public Defender (SPD) appointed Attorney Patricia Sommer to represent Christopher Kirchner in this matter. Attorney Sommer filed a no-merit notice of appeal and no-merit report. In lieu of filing a response to the no-merit report, we received a notice of appearance by Attorney Jerome F. Buting, stating that he has been retained to represent Kirchner and asking to be substituted for Attorney Sommer. We construed the document as Attorney Sommer's motion to withdraw and ordered the SPD to notify this court whether successor counsel

would be appointed for Kirchner should he later, for whatever reason, seek such appointment in this matter.

In its response, the SPD noted that an indigent person's right to SPD representation for appeal does not encompass the right to an attorney of choice or to successive appointments. The SPD therefore stated that if Kirchner discharged Attorney Sommer and proceeded with retained counsel, Kirchner would be waiving his right to SPD representation, and no successor attorney would be appointed.

The SPD further acknowledged that if Attorney Buting was taking over as substitute counsel, then the no-merit procedure would not be available or applicable. If Attorney Buting was retained for the limited purpose of assisting Kirchner with his no-merit response, however, the SPD was unaware of any rule preventing an indigent person from obtaining limited scope representation for the purpose of filing a no-merit response. Therefore, we ordered Attorney Buting to clarify the scope of his representation in this matter.

Attorney Buting has now confirmed that he intends to take over as substitute counsel and pursue a postconviction motion in the circuit court. He therefore seeks to dismiss this appeal and extend the time for filing a postconviction motion. In light of the SPD's response and Attorney Buting's clarification, we will relieve Attorney Sommer of her obligation to further represent Kirchner in this matter and substitute Attorney Buting as counsel of record.

If the unavailability of the no-merit process for retained counsel causes Kirchner to reconsider his decision to discharge Attorney Sommer and retain Attorney Buting, he must move this court for reconsideration within twenty days of the date of this opinion and order.

Upon the foregoing,

IT IS ORDERED that Attorney Patricia Sommer is relieved of her obligation to further represent Christopher Kirchner in this matter. Attorney Jerome F. Buting is substituted as counsel of record.

IT IS FURTHER ORDERED that this appeal is dismissed without prejudice.

IT IS FURTHER ORDERED that the time to file a postconviction motion under WIS. STAT. RULE 809.30 is extended to forty-five days from the date of this opinion and order.

IT IS FURTHER ORDERED that if the unavailability of the no-merit process for retained counsel causes Kirchner to reconsider his decision to discharge Attorney Sommer and retain Attorney Buting, he must move this court for reconsideration within twenty days of the date of this opinion and order.

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

Samuel A. Christensen
Clerk of Court of Appeals