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DISTRICT III

September 13, 2016

To:

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

2015AP321-CRNM	State v. Quiiave N. Hodges
2015AP322-CRNM	(L. C. Nos. 2013CM1355, 2013CM1565, 2014CF659)
2015AP323-CRNM	

Before Stark, P.J.¹

Counsel for Quiiave Hodges filed a no-merit report, and our independent review of the record revealed a potential issue arising from the circuit court's failure to personally advise Hodges of the potential deportation consequences of his plea, as mandated by WIS. STAT. § 971.08(1)(c). See *State v. Douangmala*, 2002 WI 62, 253 Wis.2d 173, 646 N.W.2d 1.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise stated.

Accordingly, on June 13, 2016, we ordered counsel to: (1) file a supplemental no-merit report addressing why there is no arguable merit to this potential issue; (2) submit a written statement from Hodges indicating he does not wish to withdraw his plea based on the court’s failure to personally advise him of the deportation consequences; or (3) file a motion for plea withdrawal in the circuit court on the basis of the circuit court’s failure to advise him of deportation consequences. *See State v. Hodges*, Nos. 2015AP321-CRNM, 2015AP322-CRNM, 2015AP323-CRNM (WI App June 13, 2016).

Pursuant to the above order, counsel has advised this court that in response to counsel’s inquiry, “Mr. Hodges wrote a one-sentence reply ... stating he wished to withdraw his pleas. However, Mr. Hodges did not state either his place of birth or citizenship status ... I again wrote Mr. Hodges inquiring about his citizenship. As of today, I have not received a reply from Mr. Hodges.”

A no-merit report is appropriate only if further proceedings would be wholly frivolous. *See McCoy v. Court of Appeals*, 486 U.S. 429, 437 (1988). We indicated in our previous order the record did not disclose whether Hodges was born in the United States of America, or was otherwise a United States citizen. A potential issue thus arose regarding whether Hodges could show that his pleas were likely to result in his “deportation, exclusion from admission to this country or denial of naturalization.” *See* WIS. STAT. § 971.08(2); *Douangmala*, 253 Wis. 2d 173, ¶46.

Hodges’ response to counsel’s inquiry that he “wished to withdraw his pleas” does nothing to answer the question whether he was born in the United States or was otherwise a

United States citizen. Because of Hodges' inadequate response, we are unable to review the possible merits of an appeal on this issue. We therefore reject the no-merit report.

We admonish Hodges that our previous order concluded there were no other issues of arguable merit. Indeed, we determined there was no manifest injustice upon which Hodges could seek to withdraw his pleas, with one possible exception, involving whether he met the requirements of WIS. STAT. § 971.08(2) and *Douangmala*. Hodges' response to his counsel that he "wished to withdraw his pleas" does not satisfy, or even attempt to address, the requirement that Hodges demonstrate his pleas were likely to result in his deportation.

With that in mind, therefore,

IT IS ORDERED that the no-merit report is rejected and the appeal is dismissed without prejudice.

IT IS FURTHER ORDERED that the deadline for filing a postconviction motion or notice of appeal in these matters is extended to November 1, 2016.

Diane M. Fremgen
Clerk of Court of Appeals