



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT III

December 7, 2016

To:

Hon. Gregory E. Grau
Circuit Court Judge
Marathon County Courthouse
500 Forest St.
Wausau, WI 54403

Shirley Lang
Clerk of Circuit Court
Marathon County Courthouse
500 Forest St.
Wausau, WI 54403

Kenneth J. Heimerman
District Attorney
Marathon County Courthouse
500 Forest St.
Wausau, WI 54403-5554

Ralph Sczygelski
Sczygelski & Pangburn Law Firm, LLC.
713 Washington St.
Manitowoc, WI 54220-4525

Criminal Appeals Unit
Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

Robert W. Kryshak
601 McClellan St., Apt. C3
Wausau, WI 54401

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

2015AP2050-CRNM State of Wisconsin v. Robert W. Kryshak (L. C. No. 2011CF680)

Before Stark, P.J., Hruz and Seidl, JJ.

Counsel for Robert Kryshak filed a no-merit report following Kryshak's conviction for repeated sexual assault of the same child (at least three violations of first-degree sexual assault), and our independent review of the record revealed no issues of arguable merit, with one possible exception: a potential issue arising from the circuit court's failure to personally advise Kryshak

of the potential deportation consequences of his plea, as mandated by WIS. STAT. § 971.08(1)(c).¹ See *State v. Douangmala*, 2002 WI 62, 253 Wis. 2d 173, 646 N.W.2d 1.

We could not discern from the record whether Kryshak was born in the United States of America, or was otherwise a United States citizen. Accordingly, on October 31, 2016, we ordered counsel to file within thirty days either: (1) a supplemental no-merit report addressing why there is no arguable merit to this possible issue; (2) a written statement from Kryshak indicating he does not wish to withdraw his plea based on the circuit court's failure to personally advise him of his deportation consequences, and he waives any challenge to the plea on that basis; or (3) a postconviction motion for plea withdrawal in the circuit court on the basis of the failure to advise of the deportation consequences, notifying this court should he decide to file a postconviction motion. See *State v. Kryshak*, No. 2015AP2050-CRNM (WI App Oct. 31, 2016).

Counsel has failed to comply with this court's October 31, 2016 order. A no-merit report is appropriate only if further proceedings would be wholly frivolous. See *McCoy v. Court of Appeals of Wis.*, 486 U.S. 429, 437 (1988). Because of counsel's failure to obey our October 31, 2016 order, we are unable to review the possible merits of a potential appeal on the issue of whether Kryshak could show his plea was 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. We therefore reject the no-merit report.

We admonish Kryshak that our previous order concluded there were no other issues of arguable merit.

¹ References to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

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 this matter is extended to December 31, 2016.

Diane M. Fremgen
Clerk of Court of Appeals