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DISTRICT III

December 30, 2020

To:

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Wausau, WI 54403

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

2020AP291-CRNM	State of Wisconsin v. Jacob Michael Cummings (L.C. # 2016CF193)
2020AP292-CRNM	State of Wisconsin v. Jacob Michael Cummings (L.C. # 2016CF597)

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

Appointed counsel for Jacob Cummings filed a motion to withdraw as counsel, to dismiss the no-merit appeals, and to extend the time for Cummings to file a postconviction motion or notice of appeal either pro se or with retained private counsel. Attached to the motion was a statement signed by Cummings stating he wished to discharge his appellate attorney so that he could proceed by himself or with retained counsel. Cummings expressed his understanding that the State Public Defender (“SPD”) would not appoint another attorney for him and, if allowed to proceed pro se, he would be required “to comply with all rules of appellate procedure, timely file briefs or motions in proper form, secure any witnesses, present evidence and all legal argument.” Cummings confirmed he was “making this choice knowingly, voluntarily, and intelligently.”

Because it was unclear whether Cummings intended to pursue preserved issues within the existing appeals or return to the circuit court with a postconviction motion, we ordered Cummings to file a response clarifying how he wished to proceed if counsel was allowed to withdraw. We also noted that before we could decide the motion to withdraw, we were required to consider the State Public Defender’s (“SPD”) response to the motion. *See* WIS. STAT. RULE 809.30(4)(b) and (c).

The SPD’s response acknowledges Cummings’ right to proceed without public defender representation. The SPD confirms, however, that if counsel is allowed to withdraw, Cummings will be waiving his right to public defender representation and no new or successor public defender appellate attorney will be appointed regardless whether Cummings is able to secure the services of retained counsel or otherwise regrets his decision to waive his right to public defender representation.

Cummings' response confirms that he wishes to discharge appointed counsel, dismiss his no-merit appeals, and file a postconviction motion in the circuit court. The court having considered the motion and the responses of both the SPD and Cummings,

IT IS ORDERED that attorney Timothy T. O'Connell is relieved of further representing Cummings in these matters. Counsel shall immediately forward Cummings the transcripts and any other documents to which he is entitled.

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

IT IS FURTHER ORDERED that the time for filing a postconviction motion is extended to March 1, 2021.

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

Sheila T. Reiff
Clerk of Court of Appeals