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**DISTRICT III**

March 8, 2022

To:

Hon. John M. Yackel  
Circuit Court Judge  
Electronic Notice

Daniel J. O'Brien  
Electronic Notice

Kay Cederberg  
Clerk of Circuit Court  
Bayfield County Courthouse  
Electronic Notice

Robert E. Poch, Jr. 661453  
Stanley Correctional Inst.  
100 Corrections Dr.  
Stanley, WI 54768

Kimberly Allison Lawton  
Electronic Notice

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

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2019AP2157-CR      State of Wisconsin v. Robert E. Poch, Jr.  
(L. C. No. 2016CF8)

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).**

Robert E. Poch, Jr., pro se, appeals an order denying his petition for waiver of transcript fees. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. We reject Poch's arguments and summarily affirm the order. *See* WIS. STAT. RULE 809.21 (2019-20).<sup>1</sup>

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

In 2017, Poch was convicted upon his no-contest plea of one count of repeated sexual assault of the same child, and he was sentenced to twenty-five years' initial confinement followed by fifteen years' extended supervision. Appointed counsel filed a postconviction motion for resentencing. That motion was denied after a hearing. Poch discharged his appointed counsel and appealed pro se from the judgment and order denying his postconviction motion. That case was docketed as appeal No. 2019AP1022-CR.

Poch wrote to the circuit court clerk asking, among other things: “Do I still have to request transcripts since I already have them?” The clerk referred Poch to the Guide to Wisconsin Appellate Procedure for the Self-Represented Litigant and informed him that the clerk’s office staff could not provide legal guidance. The circuit court clerk subsequently informed this court and the parties that three proceedings that were initially included on a list of hearings prepared by that office—a September 1, 2016 telephone scheduling conference; an April 17, 2017 motion hearing; and a May 31, 2017 telephone scheduling conference—were held “off the record” and, therefore, could not be transcribed.<sup>2</sup> Poch nevertheless moved the circuit court for free transcripts or recordings of the three “off the record” proceedings, asserting they were necessary to determine whether he was present during them. The circuit court summarily denied the motion, and Poch filed the present appeal.<sup>3</sup>

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<sup>2</sup> The record suggests that although a suppression motion hearing was scheduled for April 17, 2017, defense counsel moved to adjourn the hearing for that day because the judge who presided over an earlier portion of the hearing was not available.

<sup>3</sup> By order dated November 18, 2019, we held appeal No. 2019AP1022-CR in abeyance pending resolution of this appeal.

In a direct appeal from a criminal conviction, an indigent defendant would be entitled to waiver of the fees for those transcripts necessary to the issues on appeal. See *Griffin v. Illinois*, 351 U.S. 12, 19-20 (1956); *Watson v. State*, 64 Wis. 2d 264, 277, 219 N.W.2d 398 (1974); *State v. Perry*, 128 Wis. 2d 297, 304, 381 N.W.2d 609 (Ct. App. 1985). Here, the only missing transcript able to be transcribed that may be necessary to the issues on appeal is that of Poch's plea hearing; however, Poch sought transcripts or recordings of the two telephone scheduling conferences and the motion hearing, all of which were held off the record. Although Poch argued that the transcripts/recordings were necessary to determine whether he was present at these proceedings, he does not explain why his presence at these proceedings would be important to any issue on direct appeal. Nor does Poch explain why the requested transcripts/recordings are otherwise necessary to the issues he intends to raise in his direct appeal. With particular respect to the scheduling conferences, scheduling does not require a defendant's presence. See WIS. STAT. § 971.04(1)(a)-(h).

Ultimately, Poch provides no basis for ordering transcripts of the three proceedings at issue, and even if he had established grounds to order the subject transcripts, neither the circuit court nor this court can order transcripts of off-the-record proceedings that cannot be transcribed.

Upon the foregoing,

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

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

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*