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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

August 16, 2022

To:

Hon. Kelly J. Thimm
Circuit Court Judge
Electronic Notice

Mark A. Fruehauf
Electronic Notice

Michele Wick
Clerk of Circuit Court
Douglas County Courthouse
Electronic Notice

Colleen Marion
Electronic Notice

Winn S. Collins
Electronic Notice

Nicholas Fredrick Krivinchuk
10453 E. Maple Drive Ext.
P.O. Box 82
Poplar, WI 54864-9124

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

2020AP306-CRNM State of Wisconsin v. Nicholas Fredrick Krivinchuk
(L. C. No. 2018CF597)

Before Stark, P.J.¹

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).

Counsel for Nicholas Krivinchuk filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20), concluding that no grounds exist to challenge Krivinchuk's conviction for resisting a law enforcement officer by failing to promptly stop his motor vehicle, contrary to WIS. STAT. § 346.04(2t). Krivinchuk was informed of his right to file a response to the no-merit report, and he has not responded. Upon an independent review of the record as mandated by

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2019-20). All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

Anders v. California, 386 U.S. 738 (1967), this court concludes that there is no arguable merit to any issue that could be raised on appeal. Therefore, the judgment of conviction is summarily affirmed. See WIS. STAT. RULE 809.21.

The State charged Krivinchuk with attempting to flee or elude an officer and obstructing an officer. The complaint alleged that a sheriff's deputy observed an all-terrain vehicle (ATV) traveling on a county highway that was not legal for ATV travel. The deputy engaged his emergency lights and siren, and the driver eventually pulled over. The ATV driver claimed to have no identification and gave a false name before driving off at a high rate of speed. The deputy pursued the ATV and observed that it failed to stop at a stop sign. The deputy eventually terminated his active pursuit. Later, the deputy found and arrested the driver, who was identified by his Indiana ID card as Krivinchuk.

Although counsel was appointed to represent Krivinchuk, that counsel moved to withdraw at Krivinchuk's request, and the circuit court granted the motion. After waiving his right to counsel, Krivinchuk entered a guilty plea to an amended count of resisting a law enforcement officer by failing to promptly stop. The State recommended that the court dismiss the remaining count outright, and the parties jointly agreed to recommend a six-month jail term, to be served consecutively to Krivinchuk's sentence after revocation in another case. The court sentenced Krivinchuk consistent with the joint recommendation.

The no-merit report addresses whether: (1) Krivinchuk validly waived his right to counsel; (2) Krivinchuk knowingly, intelligently, and voluntarily entered his guilty plea; (3) the circuit court properly exercised its sentencing discretion; and (4) Krivinchuk is entitled to sentence credit. With particular respect to the guilty plea, the no-merit report acknowledges that

the court failed to inform Krivinchuk that it was not bound by the terms of the plea agreement, as required under *State v. Hampton*, 2004 WI 107, ¶2, 274 Wis. 2d 379, 683 N.W.2d 14. Because Krivinchuk received the benefit of the plea agreement, however, this defect in the colloquy does not present a manifest injustice warranting plea withdrawal. See *State v. Johnson*, 2012 WI App 21, ¶12, 339 Wis. 2d 421, 811 N.W.2d 441. The court also failed to advise Krivinchuk of the deportation consequences of his plea, as mandated by WIS. STAT. § 971.08(1)(c). As the no-merit report states, however, Krivinchuk is a United States citizen not subject to deportation. Any challenge to the plea on this basis would therefore lack arguable merit.

Upon reviewing the record, this court agrees with counsel's description, analysis, and conclusion that none of these issues has arguable merit. The no-merit report sets forth an adequate discussion of these potential issues to support the no-merit conclusion, and this court need not address them further.

An independent review of the record discloses no other potential issue for appeal.

Therefore,

IT IS ORDERED that the judgment is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Colleen Marion is relieved of her obligation to further represent Nicholas Krivinchuk in this matter. See WIS. STAT. RULE 809.32(3).

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

Sheila T. Reiff
Clerk of Court of Appeals