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DISTRICT I

January 10, 2023

To:

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Circuit Court Judge
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

John D. Flynn
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Nicasio Cuevas Quiles III 664751
Thompson Corr. Center
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Deerfield, WI 53531-9562

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

2018AP1490-CR State of Wisconsin v. Nicasio Cuevas Quiles, III (L.C. # 2016CF4085)
2018AP1491-CR State of Wisconsin v. Nicasio Cuevas Quiles, III (L.C. # 2016CF5012)

Before Donald, P.J., Dugan and White, 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).

In these consolidated appeals, Nicasio Cuevas Quiles, III, *pro se*, appeals judgments of conviction and an order denying his postconviction motion. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1) (2019-20).[1] We affirm.

[1] All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

The State charged Quiles in Milwaukee County Case Nos. 2016CF4085 and 2016CF5012 with eight counts of felony failure to pay child support. The circuit court appointed Attorney Leah Thomas to represent Quiles in both cases, as well as a then-pending 2015 worthless-check case that is not part of this appeal.

Thomas later moved to withdraw as counsel on all three cases, citing a communication breakdown with Quiles, and a"[l]ack of doing what's asked of him." The circuit court granted the motion. It noted that Quiles had already had three lawyers on the 2015 case, "[s]o we kind of played the string out on that one." The court set the cases for a final pretrial on May 19, 2017, and a trial on July 17, 2017.

Quiles appeared without counsel at the May 19, 2017 final pretrial hearing, though he said that he had retained a new attorney. The circuit court set the case for a status of counsel hearing for June 5, 2017, but kept the trial calendared for July 17, 2017. The State filed a motion to join the 2016 cases.

Attorney Jason Baltz appeared with Quiles at the June 5, 2017 status hearing. The circuit court converted the July 17, 2017 trial date into a hearing on the State's joinder motion in the 2016 cases and the final pretrial hearing for the 2015 case. In August 2017, Baltz moved to withdraw as counsel. Two months later, Quiles filed a letter with the court in which he purported to fire Baltz.

The circuit court addressed Baltz's motion and Quiles's letter at an October 26, 2017 hearing. The circuit court denied Quiles's request for more time to get an attorney, concluding that his request was a "delay tactic" and noted that the 2016 cases were "353 days old," the 2015 case was "772 days old," and trial on the 2016 cases was set for November 6, 2017. The circuit

court additionally noted that since the State had filed the 2015 case, Quiles had gone through three attorneys before the court appointed Thomas and Quiles hired Baltz. The circuit court noted that the 2016 cases "are not as old but follow along with that same pattern."

The circuit court observed that Baltz had been representing Quiles "ably and competently." The circuit court said that the trial would stay scheduled for November 6, 2017, and told Quiles that he could have Baltz or a new lawyer represent him.

Quiles, still represented by Baltz, subsequently pled guilty to four counts of failure to pay child support in the 2016 cases. The remaining charges were dismissed and read in. The circuit court ordered him to serve consecutive prison sentences totaling four years of initial confinement and eight years of extended supervision.

Postconviction, Quiles, represented by Attorney Paul Ksicinski, filed a motion arguing that the court's decision not to continue the trial so he could get a new lawyer violated Quiles's Sixth Amendment right to counsel of his choice. Quiles asked the court to vacate his guilty pleas. The circuit court denied the motion, reaffirming its earlier conclusion that Quiles's request was a delay tactic. The circuit court also determined that it did not deny Quiles his right to counsel of choice because he could have retained any attorney that he wanted. Lastly, the circuit court determined that Quiles had not shown a manifest injustice warranting plea withdrawal.

Quiles, *pro se*, now makes three arguments on appeal: (1) the circuit court denied him his right to counsel of choice when it refused to delay a scheduled trial to let him hire a new attorney; (2) trial counsel's ineffectiveness rendered his plea not knowing, intelligent, and

voluntary; and (3) appellate counsel was ineffective for not raising additional claims in Quiles's postconviction motion. We address each claim in turn.

Quiles devotes much of his briefing to his claim that the circuit court violated his right to counsel of his choice. A valid guilty plea, however, generally "waives all nonjurisdictional defects, including constitutional claims." ***State v. Kelty***, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886 (citation omitted). This includes claims that a circuit court denied a defendant his right to counsel of choice. *See* ***State v. Rockette***, 2005 WI App 205, ¶32, 287 Wis. 2d 257, 704 N.W.2d 382.

Regarding the validity of Quiles's guilty pleas, we note that he failed to ensure that a transcript of the plea hearing was included in the appellate record. "It is the appellant's responsibility to ensure completion of the appellate record and 'when an appellate record is incomplete in connection with an issue raised by the appellant, we must assume that the missing material supports the [circuit] court's ruling.'" *See* ***State v. Provo***, 2004 WI App 97, ¶19, 272 Wis. 2d 837, 681 N.W.2d 272 (citation omitted). We, therefore, assume that the colloquy fully conformed with the requirements for valid pleas, and as such, we deem waived any argument that Quiles was denied his right to counsel of choice.[2]

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[2] In what might be an attempt to work around the guilty-plea-waiver rule, Quiles argues that the circuit court "lacked jurisdiction over the allegations stemming from California involving the failure to pay child support during the pendency of pre-trial events." He asserts that he made this argument while the circuit court case was pending, but does not provide any supporting citations to the record to substantiate that the issue was raised. This court will not sift the record to determine if Quiles preserved this issue for appeal. *See* ***Fuller v. Riedel***, 159 Wis. 2d 323, 330 n.3, 464 N.W.2d 97 (Ct. App. 1990). Moreover, to the extent Quiles alleges lack of personal jurisdiction, "a defense of lack of personal jurisdiction is waived by pleading to the information." *See* ***State v. Asmus***, 2010 WI App 48, ¶4, 324 Wis. 2d 427, 782 N.W.2d 435.

Quiles additionally argues, for the first time on appeal, that his pleas were invalid because his trial attorneys "wrongly advised" him at all stages of their representation. Quiles contends that he was innocent and asserts that he was not "the primary source of DNA on the driver's airbag." It is unclear what Quiles's comment about DNA on the airbag refers to or what it has to do with his convictions for not paying child support.

In any event, to succeed on an ineffective assistance of counsel claim, the defendant must raise the issue by postconviction motion. Quiles overlooked this essential step. We cannot grant him the relief he seeks. *See* ***State ex rel. Rothering v. McCaughtry***, 205 Wis. 2d 675, 677-78, 556 N.W.2d 136 (Ct. App. 1996) ("Claims of ineffective trial counsel or whether grounds exist to withdraw a guilty plea cannot be reviewed on appeal absent a postconviction motion in the [circuit] court.").

Lastly, Quiles argues that his appellate counsel was ineffective. Quiles is representing himself on appeal. Therefore, we presume his claim relates to postconviction counsel.[3] Again, to raise this issue, Quiles needed to first bring it to the circuit court's attention. It cannot be raised for the first time on appeal. ***Id.*** at 681.

Therefore,

IT IS ORDERED that the judgments and order are summarily affirmed. *See* WIS. STAT. RULE 809.21.

[3] In his opening brief, he argues "that the failure of appellate counsel to raise issues in the circuit court during post[]conviction motions … was constitutionally ineffective assistance[.]"

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

Sheila T. Reiff
Clerk of Court of Appeals