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DISTRICT III

January 10, 2023

To:

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Circuit Court Judge
Electronic Notice

Katie Schalley
Clerk of Circuit Court
Dunn County Judicial Center
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Joseph T. Krech
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Elmwood, WI 54740

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

2020AP1311-CRNM State of Wisconsin v. Joseph T. Krech (L. C. No. 2015CF197)

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).

Joseph Krech appeals from a judgment convicting him of possession of child pornography and felony bail jumping. Attorney Melissa Petersen has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2019-20);¹ *Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit report sets forth the procedural history of the case and addresses whether a suppression motion should have been filed and whether there is any basis to challenge Krech's pleas or sentences. Krech has filed a response claiming: (1) the

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

complaint was not filed until a month after Krech's bond hearing; (2) the Office of the State Public Defender did not appoint counsel for Krech until after his initial appearance; (3) Forms CR-215A and CR-215B relating to probable cause were not properly filled out or distributed; (4) the State did not provide Krech's trial counsel with the forensic analysis that police performed on Krech's computer hard drives or with the transcripts of Nicole Rodriguez's recorded interviews until just before one of the scheduled trial dates; (5) Krech's trial counsel did not provide Krech with the police's forensic analysis of his computer hard drives, the raw data supporting the defense's alternate analysis, or data discs related to other cases; (6) Krech's trial counsel erroneously stated at the sentencing hearing that Krech had "admitted guilt" when he actually pled no contest; (7) Krech's probation officer falsely promised Krech that any admissions he made to her could not be used against him in court; (8) the circuit court called Krech after a hearing (at which Krech did not appear) to convey the terms of a plea offer; (9) the court made several comments indicating bias, including refusing to allow one of Krech's attorneys to withdraw because Krech "cost this state too much money as it is already," complaining that he would have to "break his wife's heart" by not going on a planned vacation in order to accommodate Krech's trial date, and stating a belief at the preliminary hearing that Krech did in fact commit the crimes with which he was charged; (10) one of Krech's attorneys discussed Krech's trial strategy with the prosecutor; (11) the prosecutor withheld evidence from other cases that could be potentially exculpatory for the instant case; (12) none of Krech's trial attorneys interviewed potential witnesses who could have verified that Rodriguez, not Krech, had the child pornography on her computer; (13) one of Krech's trial attorneys falsely told Krech that his fingerprints were "all over the discs"; (14) all of Krech's trial attorneys failed to investigate the circumstances of the case, failed to act with due diligence or to act upon issues he raised with

them, and wanted Krech to take a plea deal; (15) none of Krech's trial attorneys challenged Rodriguez's credibility and vindictiveness; (16) the chain of custody on seized materials was broken; (17) the "dates committed" information on the judgment of conviction is too broad and does not match the complaint or original Information; (18) eight additional counts of possession of child pornography that were dismissed and read in were multiplicitous; (19) Krech did not receive a copy of a handwriting exemplar he was compelled to provide; (20) the Menomonie Police Department should not have investigated the matter because Krech did not live in its jurisdiction; (21) the first amended Information contained an erroneous lifetime supervision allegation that provided grounds for dismissal; and (22) the court told Krech he was not entitled to a "great" attorney, merely a "good or mediocre" attorney. Having independently reviewed the entire record, as well as the no-merit report, Krech's response, and a supplemental report filed by counsel, we conclude that counsel will be allowed to withdraw and the judgment of conviction shall be summarily affirmed. *See* WIS. STAT. RULE 809.21.

As background, the State charged Krech with nine counts of possession of child pornography and one count of felony bail jumping, each as a repeat offender. The charges were based upon materials seized pursuant to a search warrant obtained after Rodriguez, Krech's then-girlfriend, reported to police that Krech was in possession of child pornography. Krech's first attorney moved to suppress the evidence seized pursuant to the search warrant on the grounds that the warrant had not been returned within five days. However, a subsequent attorney withdrew the suppression motion.

Following a series of delays largely related to substitutions of counsel and discovery issues, Krech eventually entered no-contest pleas to one of the child pornography counts and the bail jumping count. In exchange, the State filed a third-amended Information removing the

repeater allegations, recommending the dismissal of the other eight child pornography counts, and agreeing to recommend a sentence of three years' initial confinement followed by three years' extended supervision on the child pornography count, with an unspecified concurrent sentence on the bail jumping count.

The circuit court conducted a plea colloquy, during which it used Krech's plea questionnaire to ascertain that Krech understood the nature of the charges and the constitutional rights he would be waiving by entering his pleas. After further verifying that the facts in the complaint and at the preliminary hearing supported the charges, the court accepted the pleas. At a subsequent hearing, the court heard from the parties and followed their joint recommendation for the statutory minimum sentence of three years' initial confinement followed by three years' extended supervision on the child pornography count, concurrent with a sentence of eighteen months' initial confinement followed by eighteen months' extended supervision on the bail jumping count.

We agree with counsel's analysis and conclusion that any challenge to the plea colloquy or the legality of the sentences would lack arguable merit, and we note that Krech himself does not claim any errors in either regard. We further agree with counsel's assertion in her supplemental no-merit report that, by entering no-contest pleas, Krech forfeited the right to raise any nonjurisdictional defects or defenses—including claimed violations of constitutional rights. See *State v. Kelty*, 2006 WI 101, ¶18 & n.11, 294 Wis. 2d 62, 716 N.W.2d 886. We conclude that the forfeiture rule applies to all of Krech's complaints about the charging documents—including any multiplicity in the read-in charges, the initial probable cause determination, issues related to the appointment and withdrawal of counsel, alleged discovery violations by the State, the chain of custody or any flaws in the police investigation, any statements made by Krech's

probation agent, and alleged bias on the part of the circuit court. In addition, Krech cannot challenge his sentences on appeal because he affirmatively asked the court for the sentences it imposed. *See State v. Scherreiks*, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989) (a defendant may not challenge on appeal a sentence that he or she affirmatively approved).

The only potential issues that remain are any allegations of ineffective assistance of trial counsel that could warrant plea withdrawal. We conclude, however, that neither the record nor Krech's allegations of matters outside of the record provide grounds for an arguably meritorious plea withdrawal claim arising from trial counsel's performance. To begin, Krech has not identified anything that was actually exculpatory in the police forensic report or other discovery materials that he claims not to have seen prior to entering his pleas.² Therefore, Krech has provided no plausible explanation for why he would have gone to trial if trial counsel had provided him the materials sooner. Similarly, Krech has not provided any statements from potential witnesses he claims his trial counsel should have interviewed that would have affected the outcome of the case. Krech himself was well aware of potential challenges to Rodriguez's credibility when he entered his pleas. Next, we are aware of no reason why counsel cannot mention a defendant's potential trial strategy to a prosecutor as part of a plea negotiation, and it is entirely proper for counsel to advise a client to accept a plea deal. Finally, the attorney whom Krech claims provided him false information about the existence of fingerprints was no longer Krech's attorney at the time Krech entered his pleas. By Krech's own account, he received the correct information nearly two years before he finally entered his pleas.

² According to appellate counsel, trial counsel disputes Krech's claim that trial counsel did not provide Krech with the forensic reports. It is unnecessary to resolve that dispute given our conclusion that there was no prejudice.

Our independent review of the record discloses no other potential issues for appeal. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

Therefore,

IT IS ORDERED that the judgment of conviction is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Melissa Petersen is relieved of any further representation of Joseph Krech in this matter pursuant to 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