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DISTRICT II

December 10, 2025

To:

Hon. Anthony C. Nehls
Circuit Court Judge
Electronic Notice

Sarah Catherine Geers
Electronic Notice

Michelle Weber
Clerk of Circuit Court
Fond du Lac County Courthouse
Electronic Notice

Michael J. Williams #257206
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P.O. Box 3310
Oshkosh, WI 54903-3310

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

2024AP2245-CR

State of Wisconsin v. Michael J. Williams (L.C. #2019CF151)

Before Neubauer, P.J., Grogan, and Lazar, 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).

Michael J. Williams appeals from the circuit court order denying Williams's motion to appoint successor counsel for his direct appeal, arguing that the court erroneously exercised its discretion.¹ Based upon our review of the briefs and Record, we conclude at conference that this

¹ The Honorable Dale L. English presided over the trial and all motions through December 2022, at which time, the Honorable Anthony C. Nehls presided over all subsequent proceedings. For ease of reference, we refer to Judge English as the trial court and Judge Nehls as the circuit court.

case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).² For the following reasons, we affirm.

In September 2020, Williams was convicted of several sex offenses involving children, and he was sentenced in November 2020. The State Public Defender (SPD) appointed Attorney Jeremy A. Newman to provide postconviction/appellate representation for Williams in January 2021. Williams filed a postconviction motion in August 2022 and a hearing was scheduled for October 2022. Before this hearing could be held, Newman filed a motion seeking to withdraw as appointed counsel at Williams’s request in September 2022 and requesting to withdraw the August 2022 postconviction motion. Newman asserted that Williams sent Newman a letter stating that he “believe[d] there [we]re irreconcilable conflicts” with Newman’s representation. Williams’s counsel also filed a motion with this court to extend the time for filing a postconviction motion, which were both granted in October 2022.

In the withdrawal motion, Newman summarized conversations he had with Williams about the consequences that would result from Newman’s withdrawal. He asserted that he “discussed [Williams’s] right to counsel and his right to proceed without appointed counsel ... or with retained counsel.” He asserted he “believe[d] ... Williams underst[ood] the dangers, disadvantages, and responsibilities of proceeding without appointed counsel.” He also stated his belief that “Williams ... underst[ood] that should the [trial] court grant [Newman’s] motion to withdraw, he will be solely responsible for all aspects of his representation” and “that he will be solely responsible for timely retaining successor counsel and if he is unable to do so, he will be

² All references to the Wisconsin Statutes are to the 2023-24 version.

forced to proceed without counsel.” Newman “also informed ... Williams that the [SPD] will not appoint successor counsel to represent him should the court grant [Newman’s] motion to withdraw as appointed counsel.”

The trial court held a hearing on the motion to withdraw in October 2022. The court addressed Williams about Newman’s motion to withdraw as appointed counsel:

THE COURT: And from his motion, he’s advised you that if you want him to withdraw that the public defender’s office will not be appointing another attorney to represent you. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: All right. And I want to make it clear that if Attorney Newman is allowed to withdraw, he’s a public defender appointment. The [c]ourt will not consider a petition for appointment of counsel. You can’t, in effect, fire the public defender appointment and then ask for me to appoint somebody else. Do you understand that?

THE DEFENDANT: I kind of -- I understand what you’re saying, but I don’t think that that’s -- my understanding of the law is that -- I mean, I got a bunch of notes here as I’m trying to go through.

....

THE DEFENDANT: *Halbert v. Michigan* cites *Douglas*, stating that *Douglas* relied on *Griffin*’s reasoning to hold that, in first appeals as of right, States must appoint counsel to represent indigent defendants.

THE COURT: Okay.

THE DEFENDANT: So I don’t want to waive my right to an attorney.

THE COURT: No, and I’m not asking you to do that. But the State has appointed an attorney to represent you and that attorney has filed a post-conviction motion. What I’m telling you is that if you decide to, in effect, fire Attorney Newman and say, I want him to withdraw, that the public defender’s office isn’t going to appoint somebody else and the [c]ourt isn’t going to appoint somebody either.

Attorney Newman is your appointed post-conviction counsel. You don't get a chance to pick and choose or, if you don't like somebody, ask them to withdraw and then ask the [c]ourt to appoint somebody. Do you understand that?

THE DEFENDANT: I understand that. But I'm not asking to pick and choose who I have for an attorney. I just want effective representation, Your Honor.

THE COURT: Okay.

THE DEFENDANT: And I just want it on the record that I'm not in any way, shape, or form waiving my right to an attorney or to be appointed an attorney.

THE COURT: All right. Well, you have been appointed an attorney.

THE DEFENDANT: Right. But due to the irreconcilable differences, I cannot work with this attorney any longer and that's why he needs to withdraw.

....

THE COURT: All right. So is it your plan to hire an attorney then?

THE DEFENDANT: I would like to get an attorney in some shape or form because of the complexity of the issues that need to be raised and the process that goes involved -- or that will be involved in litigating them issues. It's impossible for me to do it while locked up.

The court then addressed Newman about SPD's practice of allowing defendants to obtain substitute appointed counsel at the trial level but not at the postconviction/appellate level and expressed concern about the fairness of the practice of appointing only one attorney at the postconviction/appellate level. The court concluded:

THE COURT: All right. Well, I think this is what I'm going to do. I mean, fair is fair here. So I'm going to grant Attorney Newman's motion to withdraw, his motion to withdraw the post-conviction motion that he filed[.] ...

I am going to appoint an attorney to represent ... Williams as post-conviction/appellate counsel because I think he needs representation. But this -- but ... this is the only attorney that the

[c]ourt is going to be appointing as well, just so you understand that.

THE DEFENDANT: I understand, Your Honor.

Thus, the trial court appointed Attorney Greg A. Petit to represent Williams. Through his newly appointed attorney, Williams filed a postconviction motion in August 2023, and a hearing before the circuit court was held in November 2023. While the court's decision was pending, Petit sent a letter to the court asking "to not continue [his] representation beyond the end of the [p]ost-[c]onviction [m]otion proceedings[.]" He explained that he did not have the capacity to represent Williams through his appeal due to staffing issues at Petit's firm. The circuit court issued an order granting Petit's request to withdraw his representation of Williams at the end of the postconviction motion proceedings. Thereafter, the court denied Williams's postconviction motion in a thorough written decision in August 2024.

Williams requested in an August 2024 letter to the circuit court, copying this court, that it appoint counsel to represent him in his forthcoming appeal from the circuit court's order denying his postconviction motion. The circuit court responded, "[i]t is the responsibility of [SPD] to appoint appellate counsel to indigent defendants. [This court] will not address appointment of counsel unless the [SPD] refuses to appoint." In September 2024, Williams sent another letter to the circuit court, copying this court, making the same request. This court responded and denied William's request, stating,

[t]here is no appeal pending in this court and thus no basis for this court to exercise its authority to appoint counsel. In any event, Williams was aware at the time SPD counsel withdrew that 'he will be solely responsible for timely retaining successor counsel and if he is unable to do so, he will be forced to proceed without counsel.'

The circuit court also replied to Williams’s letter, reiterating that it was the SPD’s responsibility to appoint appellate counsel to indigent defendants, and it further emphasized that Williams “[was] made aware at the time [Newman] withdrew that [Williams] would ‘be solely responsible for timely retaining successor counsel and if [Williams] is unable to do, he will be forced to proceed without counsel.’”

In October 2024, Williams sent a letter addressed to the circuit court and this court requesting that this court reconsider the denial of his request for appointed appellate counsel.³ This court, concluding that nothing in Williams’s motion persuaded it to reconsider its decision, denied Williams’s motion. Thereafter, Williams filed pro se a notice of appeal from the order denying him appointment of counsel.

Whether a person was wrongly deprived of his or her constitutional right to counsel presents a question of constitutional fact that this court reviews de novo. *State v. Thornton*, 2002 WI App 294, ¶11, 259 Wis. 2d 157, 656 N.W.2d 45. We apply a two-step process in reviewing a question of constitutional fact: first, we will uphold the circuit court’s findings of historical fact unless they are clearly erroneous; second, we independently review the application of the constitutional standards to the historical facts. *State v. Jennings*, 2002 WI 44, ¶21, 252 Wis. 2d 228, 647 N.W.2d 142.

“A defendant is entitled to counsel while seeking relief through a postconviction motion under WIS. STAT. § 974.02 or a direct appeal.” *State ex rel. Kyles v. Pollard*, 2014 WI 38, ¶23,

³ At the time Williams sent the letter asking this court to reconsider its decision, he had not yet received the circuit court’s denial of his motion to be appointed appellate counsel.

354 Wis. 2d 626, 87 N.W.2d 805. “During postconviction proceedings, a defendant must choose between being represented by the SPD, proceeding pro se, or securing private representation.” *State v. Evans*, 2004 WI 84, ¶30, 273 Wis. 2d 192, 682 N.W.2d 784, *abrogated on other grounds by State ex rel. Coleman v. McCaughtry*, 2006 WI 49, 290 Wis. 2d 352, 714 N.W.2d 900. If a defendant desires to proceed pro se, he “must be provided clear warnings regarding the dangers of self-representation and waiving the right to appellate counsel before appellate counsel may withdraw.” *Evans*, 273 Wis. 2d 192, ¶31.

For a defendant to “knowingly and voluntarily waive[] his or her right to counsel on direct appeal, [the circuit court] must satisfy itself that the defendant is aware: (1) of the *Flores*⁴ rights (to an appeal, to the assistance of counsel for the appeal, and to opt for a no-merit report⁵); (2) of the dangers and disadvantages of proceeding pro se; and (3) of the possibility that if appointed counsel is permitted to withdraw, successor counsel may not be appointed to represent the defendant in the appeal.” *Thornton*, 259 Wis. 2d 157, ¶21.

A circuit court may allow counsel to withdraw as long as it does not erroneously exercise its discretion. *State v. Jones*, 2010 WI 72, ¶23, 326 Wis. 2d 380, 797 N.W.2d 378. A court may grant a motion to withdraw as postconviction/appellate counsel as long as the court is satisfied that the defendant was made aware of the *Thornton* factors. *Thornton*, 259 Wis. 2d 157, ¶21.

⁴ *State ex rel. Flores v. State*, 183 Wis. 2d 587, 516 N.W.2d 362 (1994).

⁵ The no-merit appeal option is not implicated in this case. See *id.* at 605-06 (explaining that this option is where “there would be no merit to a given criminal defendant’s appeal and therefore [the attorney] seeks to withdraw from the defendant’s case. The [n]o [m]erit report option gives the criminal defendant the option to compel counsel to document why counsel is of the opinion that the appeal would have no merit. The defendant may then respond and the court of appeals will determine whether there is any merit to the appeal.”)

An indigent defendant does not have the right to counsel of his or her choice or the right to insist that counsel raise a particular issue. *Evans*, 273 Wis. 2d 192, ¶30. If a defendant disagrees with counsel regarding which issues will be raised, “he has the choice of terminating counsel’s representation and proceeding pro se or proceeding with counsel and later seeking relief on the grounds of ineffective assistance of [postconviction or] appellate counsel.” *Id.*, ¶31.

Whether a circuit court appoints successor counsel is in its discretion. *State v. Lehman*, 137 Wis. 2d 65, 76, 403 N.W.2d 438 (1987). Courts retain this inherent authority even if a defendant has waived his right to counsel; it is not tied to a defendant’s right to counsel. *Id.*

Here, the motion to withdraw as counsel informed the circuit court that Newman had discussed with Williams his rights and what would happen if Newman was allowed to withdraw as appointed counsel. According to the motion, Newman informed Williams of the required *Flores* factors to waive his right to postconviction/appellate counsel and ensured that Williams understood them. See *Thornton*, 259 Wis. 2d 157, ¶21.

During the hearing on Newman’s motion to withdraw, the trial court explained to Williams that he was not entitled to another appointed attorney for the postconviction and appellate phase if he “fired” Newman. Williams stated that he understood, but he also did not want to proceed without an attorney. Yet, Williams maintained he wanted to “fire” his appointed counsel. The court repeatedly made it clear that Williams could retain counsel or represent himself on appeal, but he had no entitlement to appointment of successor counsel. Satisfied that Williams received and understood his rights and the consequences of “firing” his appointed attorney, the court allowed the withdrawal. The Record establishes that Williams knowingly and voluntarily waived his right to appointed counsel. Williams’s assertion that he was not waiving

his right to appointed counsel is belied by his insistence to “fire” his appointed counsel even after given warnings as to the consequences of his doing so.

At that juncture, it was within the trial court’s discretion whether to appoint successor postconviction/appellate counsel. *See Lehman*, 137 Wis. 2d at 76. The court’s discretion to appoint an attorney is not related to William’s right to counsel: the court’s discretionary decision to appoint counsel did not invalidate Williams’s waiver. *See id.* When the court-appointed attorney, Petit, moved to withdraw as Williams’s counsel, Williams had already waived his right to postconviction/appellate counsel in a colloquy before the trial court. The circuit court then once again exercised its inherent authority whether to appoint counsel, and this time, it determined not to appoint counsel after the postconviction proceeding. Williams has not provided any other basis upon which to conclude that the circuit court erroneously exercised its discretion in determining not to appoint successor counsel. Thus, we conclude that the circuit court properly exercised its discretion to deny Williams’s request to be appointed successor counsel. *Id.*

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

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

Samuel A. Christensen
Clerk of Court of Appeals