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DISTRICT IV

March 5, 2026

To:

Hon. Ann M. Peacock
Circuit Court Judge
Electronic Notice

Patricia A. FitzGerald
Electronic Notice

Jeff Okazaki
Clerk of Circuit Court
Dane County Courthouse
Electronic Notice

Christine A. Remington
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You are hereby notified that the Court has entered the following opinion and order:

2024AP1001-CR

State of Wisconsin v. Richard H. Olson (L.C. # 2019CF2509)

Before Blanchard, Kloppenburg, and Nashold, 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).

Richard H. Olson appeals a judgment convicting him of stalking, as a repeater. *See* WIS. STAT. §§ 939.62(2), 940.32(2) (2023-24).¹ Olson contends that the circuit court erroneously exercised its discretion when it denied his request to allow his attorney to withdraw from representing him at Olson's 2023 sentencing hearing. Based on 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. Because Olson fails to show that the court erroneously exercised its discretion, we summarily affirm.

¹ All references to the Wisconsin Statutes are to the 2023-24 version.

Olson was charged with one count of stalking, as a repeater, and one count of violating an injunction for conduct alleged to have occurred while Olson was incarcerated based on a criminal conviction in a separate case. Attorney Patrick Shilling from the state public defender's office was appointed to represent Olson. On February 25, 2020, Olson pled guilty to one count of stalking as a habitual offender. In exchange, the State moved to dismiss the charge of violating an injunction and committed to recommending no more than six years of initial confinement on the stalking count.

On the morning of the sentencing hearing scheduled for July 6, 2020, just before the hearing, Olson informed Attorney Shilling that he wanted to withdraw his guilty plea. At the hearing, Attorney Shilling moved the circuit court to withdraw as counsel, telling the court that he and Olson had a difference of opinion as to how to proceed in the case. The court granted the motion.²

Soon after, the state public defender's office appointed another attorney to represent Olson, but the attorney later moved to withdraw due to a conflict of interest, and the circuit court granted the motion. On November 4, 2020, the state public defender's office appointed Attorney Michael Hughes to represent Olson. At Hughes's request, the court ordered Olson to undergo a competency examination, and at a competency hearing on April 5, 2021, the court determined that Olson was competent to proceed.

² The motion was granted by the Honorable Jill J. Karofsky, who presided over the case through August 2, 2020. Subsequent proceedings discussed in this opinion occurred while the Honorable Chris Taylor presided over the case. As of September 22, 2023, the Honorable Ann Peacock presides over this case.

On the same day as the competency hearing, Olson, through Attorney Hughes, filed a motion to withdraw his plea, and a hearing on the motion was scheduled for May 24, 2021. The hearing on the motion was rescheduled multiple times: once to accommodate Attorney Hughes's schedule, again to accommodate the State's schedule, then at Olson's request for reasons related to a purported health condition, and finally for reasons that are not clear in the appellate record. After Olson made a second request that the motion hearing be adjourned based on his health, the State objected. The State argued that Olson's stated reasons for adjournment were not sufficiently specific and pointed out that there was no documentation to verify his assertions of fact. The State also noted that the victim had a right to a prompt disposition of the case. The circuit court denied Olson's request. Separately, the court approved a later request by Olson that he be permitted to appear remotely.

On May 31, 2022, Olson appeared remotely at the hearing and, after a discussion on the merits of his motion to withdraw his plea, the circuit court denied Olson's motion.

The circuit court scheduled Olson's sentencing for September 9, 2022. The hearing was rescheduled to November 22, 2022, to accommodate Attorney Hughes' childcare obligations. On November 16, 2022, Olson, through Attorney Hughes, requested to adjourn the sentencing hearing until a later date because Olson now wanted to appear in person. As part of his request to adjourn until a later date, Olson informed the court that, for medical reasons, he was "hopeful that he will be healthy enough" to attend the hearing in person by the following March. The State did not object to Olson appearing personally at the sentencing hearing. But the State did not agree to a delay in sentencing for as long as Olson requested. The State noted that Olson's request was similar to previous set-over requests based on purported risks to his health. The State also took the position that Olson's request was unduly vague and speculative, in that he

merely expressed a hope that he would be healthy enough for the court to hold the sentencing hearing by March 2023. Further, the State conveyed to the court that the victim had expressed a desire for the case to move forward. The court rescheduled the sentencing hearing for January 25, 2023.

Olson appeared at the sentencing hearing in person. Early on, Olson moved, through Attorney Hughes, to adjourn the hearing because Olson was starting to work on an appeal of a previous stalking conviction. Olson predicted that the resolution of that appeal would favorably influence the circuit court's sentencing decision in this case. After hearing additional comments from the parties, the court denied Olson's motion to adjourn. The court said that it had not heard a sufficient basis to adjourn and noted that almost three years had passed since Olson entered his plea in February 2020. The court added that, although some of the delays in the case were not attributable to Olson, Olson had made numerous requests for delays, many of which had been granted.

At this point in the hearing, counsel informed the circuit court that Olson had just told counsel that Olson wanted to terminate counsel's representation of him. There was a brief colloquy and the court denied the requests to terminate counsel and to delay the hearing, as described in more detail below. The court sentenced Olson to six years of initial confinement and four years of extended supervision.

Olson argues on appeal that the circuit court erroneously exercised its discretion when the court denied his request for new counsel at the January 25, 2023 sentencing hearing.

It is within a circuit court's discretion to decide whether to relieve an attorney and appoint another, and we will not disturb the court's decision absent an erroneous exercise of discretion. *See State v. Jones*, 2010 WI 72, ¶23, 326 Wis. 2d 380, 797 N.W.2d 378. When we

review a circuit court’s discretionary decision, “we examine the record to determine if the circuit court logically interpreted the facts, applied the proper legal standard, and used a demonstrated rational process to reach a conclusion that a reasonable judge could reach.” *State v. Wanta*, 224 Wis. 2d 679, 689, 592 N.W.2d 645 (Ct. App. 1999). Our review under this standard is deferential. *State v. Allen*, 2004 WI 106, ¶9, 274 Wis. 2d 568, 682 N.W.2d 433.

When evaluating whether a circuit court erroneously exercised its discretion in denying a motion for new counsel, we weigh a number of factors, including:

(1) the adequacy of the court’s inquiry into the defendant’s complaint; (2) the timeliness of the motion; and (3) whether the alleged conflict between the defendant and the attorney was so great that it likely resulted in a total lack of communication that prevented an adequate defense and frustrated a fair presentation of their case.

State v. Lomax, 146 Wis. 2d 356, 359, 432 N.W.2d 89 (1988).

Taking these factors into account, we conclude that Olson fails to show that the circuit court here erroneously exercised its discretion in denying Olson’s request to allow Attorney Hughes to withdraw and for the appointment of new counsel.

We observe as a threshold matter that the two different defense requests—to allow current counsel to withdraw for the appointment of new counsel, and to delay the sentencing hearing—presented potentially intertwined issues. This is because the parties and the circuit court knew that, if Olson was given a new attorney, this would necessarily require an adjournment of the hearing. Therefore, under the circumstances, the circuit court was entitled to weigh the possibility that Olson was asking the court to allow his current counsel to withdraw only as a pretext to delay the hearing.

With that clarification, we turn to the first *Lomax* factor. We conclude that the circuit court conducted an adequate colloquy. Olson argues that the circuit court made a baseless assumption that his motion for termination of counsel was an attempt to delay sentencing without giving Olson an opportunity to explain why he wanted Attorney Hughes to withdraw. But these positions are not supported by the record. The court confirmed that counsel was an assistant public defender appointed to represent Olson and explained that defendants do not have the right to select which appointed attorney represents them. The court made a finding that Olson's request to terminate representation was a delay tactic. Further, the court commented that it had heard no statutory basis to allow the withdrawal. The court also confirmed with counsel that there was no conflict of interest between counsel and Olson and that counsel had asked to withdraw based only on Olson's request. Olson then briefly attempted to directly address the court, and the court appropriately asked Olson to direct his comments to the court through his counsel so that Olson did not risk inadvertently incriminating himself. The court then learned through counsel that Olson was taking the position that he was being denied his constitutional right to competent and effective counsel. The court informed Olson that it had heard no basis to conclude that counsel's representation was incompetent. The court gave Olson ample opportunity, through counsel, to provide the court with whatever support Olson could offer for his request.

The second *Lomax* factor, the timeliness of the motion, also supports affirming the circuit court's decision. "Eleventh hour requests are generally frowned upon as a mere tactic to delay." *Id.* at 361-62. The circuit court here accurately acknowledged that not all of the delays in the case were attributable to Olson, but also accurately noted that Olson made multiple requests that delayed the proceedings, a number of which were granted. This included

termination of his first appointed counsel and multiple delays related to his health. By the time of the sentencing hearing, Attorney Hughes had been providing representation to Olson for over two years, during which time Attorney Hughes made multiple motions to the court for delay on Olson's behalf. It is true that, when "it is possible that the conflict between the defendant and counsel arose on" the same day that the request to terminate counsel is made, this may support a determination that the motion was timely. *See id.* at 362. However, here the circumstances suggested that the request to terminate counsel was a last-minute pretext for delay. To recap, at this same hearing, the court had just heard and denied a motion made by Attorney Hughes on Olson's behalf to adjourn so that Olson could pursue an appeal in another case. Then, immediately after this motion was denied, Olson moved to terminate his counsel. Further, no support was offered for the proposition that current counsel had not provided, and would not continue to provide, effective assistance of counsel to Olson.

Also favoring affirmance is the third *Lomax* factor, "whether the alleged conflict between the defendant and the attorney was so great that it likely resulted in a total lack of communication that prevented an adequate defense and frustrated a fair presentation of the case." *See id.* at 359. As discussed above, during the sentencing hearing Attorney Hughes acted on Olson's direction in moving to adjourn pending the resolution of another appeal, moved to terminate himself as counsel, and relayed Olson's expression of belief that he was being denied effective counsel. The record also reflects that Attorney Hughes had made apparently effective and timely motions to the circuit court on various topics in the months leading up to Olson's request for new counsel. While the record suggests a history of some disagreements between Olson and Attorney Hughes regarding the competency issue, Olson fails to show any conflict that could have even approached the level at which there was a total lack of communication that

prevented Olson’s adequate defense and frustrated a fair presentation of his defense. Indeed, in his briefing to this court, Olson does not engage in any meaningful discussion of the third *Lomax* factor. Instead, he asserts only that, because he “was not allowed to say what the conflict was, we do not know how it affected the presentation of his case.” However, as discussed above, the record reflects that Olson, through Attorney Hughes, was allowed to state that his conflict with Attorney Hughes was based on his belief that he was being denied effective assistance of counsel, and nothing prevented Olson from using that mode to explain to the court the nature of any conflicts and their alleged effects on his defense. For these reasons, we conclude that the third *Lomax* factor favors the circuit court’s ruling.

Based on the consideration of these factors, we conclude that the circuit court did not erroneously exercise its discretion in denying Olson’s request for new counsel.

IT IS ORDERED that the judgment of conviction 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