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DISTRICT III

October 29, 2024

To:

Hon. David L. Weber
Circuit Court Judge
Electronic Notice

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Green Bay, WI 54307-9033

Jennifer L. Vandermeuse
Electronic Notice

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

2021AP2122-CRNM State of Wisconsin v. Michael J. Estevez (L.C. # 2018CF43)

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).

Michael J. Estevez, by appointed counsel Attorney Angela D. Chodak, filed a no-merit notice of appeal in this matter. Attorney Chodak filed a no-merit report, Estevez filed a response, and Attorney Chodak filed a supplemental no-merit report. We subsequently received a notice of retainer filed by Attorney Nicole M. Masnica and a stipulation to substitute counsel,

advising that Attorney Masnica would be substituted for Attorney Chodak “at the request and consent” of Estevez.¹

A convicted defendant who does not require appointed counsel normally may choose his or her attorney. *See State v. Peterson*, 2008 WI App 140, ¶7, 314 Wis. 2d 192, 757 N.W.2d 834. We therefore construed the stipulation as Attorney Chodak’s motion to withdraw and directed the State Public Defender (SPD) to respond to the motion, as required under WIS. STAT. RULE 809.30(4)(b). In its response, the SPD acknowledges Estevez’s right to proceed without public defender representation. However, the SPD warns that by discharging Attorney Chodak in favor of Attorney Masnica, Estevez will be waiving his right to public defender representation, and no new or successor attorney will be appointed in this case. In light of the foregoing, we will relieve Attorney Chodak of further representation of Estevez in this matter. Attorney Masnica is substituted as counsel of record.

Attorney Masnica has asked this court to further hold this no-merit appeal in abeyance to allow counsel time to determine a course of action. As noted in our previous order, the no-merit process of WIS. STAT. RULE 809.32 “does not apply to privately retained counsel.” *State ex rel. Smalley v. Morgan*, 211 Wis. 2d 795, 798 n.2, 565 N.W.2d 805 (Ct. App. 1997), *overruled on other grounds by State ex rel. Lopez-Quintero v. Dittmann*, 2019 WI 58, 387 Wis. 2d 50, 928 N.W.2d 480. Therefore, rather than continuing to hold this no-merit appeal in abeyance, we will dismiss the appeal without prejudice and extend the time for filing either a postconviction motion or notice of appeal under RULE 809.30(2)(h). If the unavailability of the no-merit process for

¹ The notice of retainer and stipulation to substitute counsel were filed on April 12, 2024; however, due to clerical error, this court was not advised of the notice or stipulation at that time.

retained counsel causes Estevez to reconsider his decision to discharge Attorney Chodak and retain Attorney Masnica, he must move this court for reconsideration within twenty days of the date of this opinion and order.

Upon the foregoing,

IT IS ORDERED that Attorney Angela D. Chodak is relieved of her obligation to further represent Michael J. Estevez in this matter. Attorney Nicole M. Masnica is substituted as counsel of record.

IT IS FURTHER ORDERED that this appeal is dismissed without prejudice.

IT IS FURTHER ORDERED that the time to file a postconviction motion or notice of appeal under WIS. STAT. RULE 809.30(2)(h) is extended sixty days from the date of this opinion and order. *See* WIS. STAT. RULE 809.82(2)(a).

IT IS FURTHER ORDERED that if the unavailability of the no-merit process for retained counsel causes Estevez to reconsider his decision to discharge Attorney Chodak and retain Attorney Masnica, he must move this court for reconsideration within twenty days of the date of this opinion and order.

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

Samuel A. Christensen
Clerk of Court of Appeals