

STATE OF WISCONSIN : CIRCUIT COURT : CHIPPEWA COUNTY

State of Wisconsin,

Plaintiff

vs.

DEFENDANT'S §809.30 MOTION
TO WITHDRAW PLEA

Colton Treu,

Defendant

Case No. 18-CF-778

The defendant, appearing specially by his attorney and reserving his right to challenge the court's jurisdiction, moves the court for an order authorizing the defendant to withdraw his pleas of no contest and guilty (to one count) entered on December 16, 2019. This motion is brought pursuant to Wis.Stats. §§ 809.30 and 971.08, and is based primarily upon the case of *State v. Riekkoff*, 112 Wis.2d 119, 332 N.W.2d 744 (Wis. 1983) (which held that a defendant who was under a misapprehension with respect to the effect of his plea – because he thought he would still have a right to appellate review of the denial of an evidentiary motion – “when as a matter of law he could not. Under these circumstances, as a matter of law his plea was neither knowing nor voluntary.”) and upon the cases cited in any future memorandum in support of this motion.

AS GROUNDS, defendant asserts the following:

1. That he is entitled to withdraw his no contest pleas (and one guilty plea), because they were not knowing, voluntary and intelligent, because he was erroneously advised by his trial attorneys that he would still be able to appeal the denial of the motion for change of venue if he changed his pleas pursuant to the plea agreement with the State, when in fact, as a matter of law, the entry of these pleas eliminated his ability for appellate review under the guilty plea waiver rule (*see State v. Dietzen*, 164 Wis. 2d 205, 210, 474 N.W.2d 753 (Ct. App. 1991)).
2. That he is entitled to withdraw his no contest pleas (and one guilty plea) because he was denied the effective assistance of counsel as guaranteed by the sixth amendment to the United States Constitution and by art. I, sec. 7 of the Wisconsin Constitution. In particular, Mr. Treu was denied the effective assistance of counsel when trial counsel failed to advise him that the entry of his guilty pleas (and one guilty plea) would eliminate his opportunity for appellate review of the denial of the change of venue motion and he was prejudiced by such deficient performance in that he did not enter a knowing and voluntary plea and would not have changed his pleas had he been advised that he would be waiving/forfeiting his right to appellate review by entering such pleas.

This motion is further based upon all of the files, pleadings and records herein. Mr. Treu respectfully requests that an evidentiary hearing be held in consideration of this motion, pursuant to *State v. Machner*, 92 Wis.2d 797, 285 N.W.2d 905 (1979) and Wis.Stats. § 974.06(3)(c).

DATED: January 15, 2021.

Schertz Law Office
Electronically signed by:

Dennis Schertz
State Bar No. 1024409
P.O. Box 133
Hudson WI 54016
(715) 377-0295