

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

OCTOBER 17, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62(1), STATS.

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

**No. 95-1513-CR-NM**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

**STATE OF WISCONSIN,**

**Plaintiff-Respondent,**

**v.**

**STEVEN T. MILLER,**

**Defendant-Appellant.**

APPEAL from a judgment and an order of the circuit court for Milwaukee County: JEFFREY A. WAGNER, Judge. *Affirmed.*

Before Wedemeyer, P.J., Sullivan and Schudson, JJ.

PER CURIAM. Counsel for Steven Miller has filed a no merit report pursuant to RULE 809.32, STATS. Miller has responded to the report. On our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude that there is no arguable merit to any issue that could be raised on appeal.

The State charged Miller as a party to the crime of auto theft, and with first-degree recklessly endangering safety. Miller pleaded no contest to both charges. In return for his plea, the State agreed to, and did, recommend concurrent three-year prison sentences, consecutive to Miller's sentence on revocation in an unrelated case.

At the sentencing hearing, defense counsel mistakenly told the court that Miller's sentence on revocation was a three-year prison term, when it was actually a twenty-year prison term. The trial court sentenced Miller to concurrent five-year terms, consecutive to the revocation sentence.

Miller moved to modify the sentences, citing as a new factor the true length of his revocation sentence. The trial court denied modification, reasoning that the seriousness of his offenses, and his lengthy record of criminal convictions justified the length of his sentences, and also justified making them consecutive to the twenty-year term.

Counsel contends that a motion to withdraw Miller's plea would fail because the plea hearing transcript establishes that it was made knowingly, intelligently and voluntarily. That, however, is not correct because the trial court failed to determine the extent of Miller's education and general comprehension, failed to establish his understanding of the nature of the charged crimes and their range of punishments, and failed to fully advise Miller of the constitutional rights he forfeited by his plea. Because these are mandatory trial court duties when accepting a plea, *State v. Bangert*, 131 Wis.2d 246, 261-62, 270-72, 389 N.W.2d 12, 23 (1986), Miller could move to vacate the plea and force the State to prove by clear and convincing evidence that his plea was knowing, voluntary and intelligent despite the inadequacy of the record at the plea hearing. *Id.* at 274, 389 N.W.2d at 26.

We conclude, however, that clear and convincing evidence in the record establishes Miller's understanding of his plea despite the plea hearing omissions. Miller's plea hearing questionnaire, which he signed and admittedly read, understood and discussed with his attorney, reported that he had ten years of education and a GED, was not under the influence of drugs or alcohol, was not mentally ill, and understood the full implications of his plea. He was

also an experienced litigant in criminal proceedings, as evidenced by his long record of prosecutions and convictions.

Additionally, Miller acknowledged in the questionnaire that he understood the charges, and he has not alleged otherwise. The elements of the charged crimes are uncomplicated and easy to understand. The plea questionnaire also provided Miller a complete list of the constitutional rights he was about to waive, and informed him of the maximum penalties he faced. Based on that evidence, the State could satisfy its burden from existing evidence in the record, and Miller therefore stands no chance of success on a plea withdrawal motion.

In his response, Miller points out that the trial court also failed to inform him that it was not bound by the State's sentencing recommendation. He asserts that had he known he faced additional punishment, he would not have agreed to the plea. However, Miller could not succeed in withdrawing his plea on this basis either. In his plea hearing questionnaire, Miller affirmed that "I understand that the Judge is not bound to follow any plea agreement or any recommendation made by the district attorney, my attorney, or any presentence report. I understand that the Judge is free to sentence me to the maximum possible penalties in this case," which the questionnaire then set forth.

Miller next contends that the trial court relied on erroneous information concerning his record when it imposed sentence. However, the alleged errors Miller now identifies are of little or no consequence, such as whether he committed a prior crime in 1994 or 1992. In any event, Miller never identified those errors at the sentencing hearing or in his motion to modify the sentence, and the record indicates that the trial court was concerned with the number of previous convictions, not their details.

Miller also contends that the trial court erroneously exercised its discretion when it denied a modification of sentence, after learning that Miller faced a twenty-year as opposed to a three-year sentence on his prior conviction and revocation. In its decision on Miller's motion, the trial court fully explained the factors it relied on in sentencing him, and specifically excluded from those factors the length of his prior sentence. Miller is therefore unable to reasonably

argue that defense counsel's error at the sentencing hearing caused him any prejudice.

Miller next contends that appellate counsel has not adequately investigated his case and has therefore failed to identify meritorious issues. However, as mandated by *Anders*, we have independently reviewed the record to determine whether there are meritorious issues for appeal. It is based on that independent review, and not on counsel's no merit report, that we conclude that the appeal lacks merit. Therefore, Miller has not demonstrated that counsel's investigation and presentation of his case has prejudiced him.

Finally, Miller asserts that the complaint contained numerous errors regarding the factual circumstances of his crimes. However, the corrections he offers are not exculpatory. Miller has no basis to challenge the adequacy of the complaint as the factual basis for accepting his plea.

Counsel's no merit report also addresses whether the trial court properly exercised its sentencing discretion apart from the mistake over the length of his sentence, and whether the court properly calculated his sentence credit. We concur with counsel's analysis of these issues and his conclusion that neither has merit.

Our review of the record discloses no other potential issues for appeal. Therefore, we affirm the judgment and order and relieve Miller's counsel of any further representation of him in this matter.

*By the Court.* – Judgment and order affirmed.