

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

December 7, 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, STATS.

NOTICE

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

Nos. 95-2398-CR-NM
95-2399-CR-NM

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

WILLIAM E. HAMPTON,

Defendant-Appellant.

APPEAL from judgments and an order of the circuit court for Grant County: JOHN R. WAGNER, Judge. *Affirmed.*

GARTZKE, P.J.¹ William E. Hampton appeals from judgments of conviction for battery, bail jumping and violating an injunction, and from a postconviction order.² The State Public Defender appointed Attorney Robert P.

¹ These appeals are decided by one judge pursuant to § 752.31(2)(f), STATS.

² These appeals involve the same parties and were treated as if they were consolidated in the trial court. Because they were not consolidated on appeal, we *sua sponte* consolidate appeal nos. 95-2398-CR-NM and 95-2399-CR-NM. See RULE 809.10(3), STATS.

VanDeHey as Hampton's appellate counsel. Attorney VanDeHey filed and served a no merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and RULE 809.32(1), STATS. Hampton filed a response. After an independent review of the records as mandated by *Anders*, we conclude that any further appellate proceedings would lack arguable merit.

Hampton entered *Alford* pleas to misdemeanor battery, contrary to § 940.19(1), STATS., two counts of misdemeanor bail jumping, contrary to § 946.49(1)(a), STATS., and violating a domestic abuse injunction, contrary to § 813.12(8)(b), STATS.³ The trial court withheld sentence and imposed three year concurrent terms of probation on each count. Hampton's probation was revoked and the trial court imposed a four-month consecutive jail term on each count, totalling sixteen months for the four misdemeanor convictions. The trial court denied Hampton's postconviction motion for sentence modification.

The no merit report addresses the convictions generally, including the issue which is Hampton's sole focus: whether the trial court erroneously exercised its sentencing discretion. Hampton suffers from major medical problems, including cancer and related symptoms. Hampton asserts that his condition will deteriorate if he must remain in jail for sixteen months.

The trial court may consider the defendant's health at sentencing. See *State v. Michels*, 150 Wis.2d 94, 99-100, 441 N.W.2d 278, 280 (Ct. App. 1989). The trial court considered Hampton's medical problems when it granted him Huber release privileges "for psychological or medical treatment." See § 303.08(1)(e), STATS.

Hampton sought sentence modification. He testified extensively about his medical problems at the postconviction hearing. Hampton's deteriorating medical condition is not a new factor which entitles him to resentencing. *Michels*, 150 Wis.2d at 99, 441 N.W.2d at 280. Although the trial court declined to modify Hampton's sentence, it stayed that sentence for sixty

³ An *Alford* plea is a conditional guilty plea. *North Carolina v. Alford*, 400 U.S. 25, 37 (1970). An *Alford* plea waives a trial and constitutes consent to the imposition of sentence, despite the defendant's claim of innocence. *Id.* at 32, 38.

days to allow Hampton to seek medical treatment. Although we do not doubt the seriousness of Hampton's medical problems, our review of the records, judgments and order demonstrates that the trial court considered Hampton's medical problems when it imposed the jail term and denied his postconviction motion. The trial court therefore did not erroneously exercise its discretion, and for that reason we must affirm the order denying Hampton's motion.

Upon our independent review of the records as mandated by *Anders* and RULE 809.32(3), STATS., we conclude that there are no other meritorious issues and that any further appellate proceedings would lack arguable merit. Accordingly, we affirm the judgments of conviction and postconviction order and relieve Attorney Robert P. VanDeHey of any further appellate representation of Hampton.

By the Court. – Judgments and order affirmed.