

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

November 30, 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.

No. 95-2616-CR-NM

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

DANIEL L. MARTZ,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Rock County:
JAMES WELKER, Judge. *Affirmed.*

Before Eich, C.J., Dykman and Vergeront, JJ.

PER CURIAM. Counsel for Daniel Martz has filed a no merit report pursuant to RULE 809.32, STATS. Martz has not responded to the report. Upon our independent investigation 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.

In 1990, Martz pled guilty to second-degree sexual assault of a child, § 948.02(2), STATS. The court withheld sentence and placed Martz on five years' probation. After incidents of driving while intoxicated in 1993 and 1994, his probation was revoked. He was then sentenced to a four-year prison term, with 180 days of sentence credit. Martz did not preserve his appeal rights from the original conviction, and his sole concern on this appeal is with the length of his sentence.

The trial court properly sentenced Martz. The trial court has wide discretion in sentencing. *State v. Krueger*, 119 Wis.2d 327, 336, 351 N.W.2d 738, 743 (Ct. App. 1984). We presume that the trial court acted properly in sentencing the defendant, and the burden is on the defendant to prove otherwise. *Id.* In sentencing Martz, the court considered his history of alcohol-related crimes and misdeeds, the need to protect the public from future conduct of the same sort, his continued failure to accept responsibility for his conduct, and the need to deter others and to avoid unduly depreciating the seriousness of sexually assaulting a child. In Martz's favor, the court also considered that the victim was fifteen and engaged in the conduct willingly and that no sexual acts beyond touching occurred. The maximum sentence Martz faced was ten years in prison. Given the factors considered by the court, a four-year term was the product of a reasoned decision and was not excessive.

Upon our independent review of the record as mandated by *Anders*, we conclude that there are no other potentially meritorious issues and that any further proceedings would be frivolous and without arguable merit. We therefore affirm the judgment of conviction and relieve Martz's counsel of any further representation of him in this appeal.

By the Court. – Judgment affirmed.