

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

November 7, 1996

NOTICE

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.

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

**Nos.96-0667-CR-NM
96-0668-CR-NM
96-0669-CR-NM
96-0670-CR-NM
96-0671-CR-NM
96-0672-CR-NM
96-0673-CR-NM**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

THOMAS J. BECKER,

Defendant-Appellant.

APPEAL from judgments of the circuit court for Dodge County:
ANDREW P. BISSONNETTE, Judge. *Affirmed.*

DYKMAN, P.J. Thomas J. Becker appeals from judgments convicting him of three counts of operating a motor vehicle while intoxicated, one count of misdemeanor battery, and three counts of misdemeanor bail jumping, respectively.¹ Becker entered a no contest plea to each offense. With

¹ These appeals were consolidated on July 26, 1996 by this court's order.

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respect to the criminal traffic offenses, the trial court sentenced Becker to concurrent sentences, the maximum of which was twelve months, imposed fines and costs totalling \$7,160.00, revoked his driver's license for thirty months, and ordered his truck seized. With respect to Becker's misdemeanor convictions, the trial court imposed a four-month sentence consecutive to any other sentence, imposed two concurrent three-year terms of probation and ordered that he not possess a gun while on probation. The trial court withheld sentence in two of the bail jumping cases.

Becker's appellate counsel has filed a no merit report pursuant to RULE 809.32, STATS., and *Anders v. California*, 386 U.S. 738 (1967). Counsel furnished a copy of the no merit report to Becker on July 22, 1996. Becker has not filed a response to it. Upon consideration of the report and an independent review of the record, we conclude that there is no arguable merit to any issue that could be raised on appeal.

The no merit report identifies two potential issues for appellate review in these consolidated appeals: (1) whether the trial court erred in accepting Becker's no contest pleas; and (2) whether the sentences imposed resulted from the trial court's erroneous exercise of discretion, were illegal, or were based on improper factors.

This court has reviewed the plea colloquy between Becker and the trial court and concludes that the requirements of § 971.08, STATS., and *State v. Bangert*, 131 Wis.2d 246, 267-72, 389 N.W.2d 12, 23-25 (1986), were met. The trial court questioned Becker at length about his proposed no contest pleas and the various constitutional rights that Becker would waive upon entering such pleas. Becker indicated that he understood his rights and that his no contest pleas would waive those rights. The court discussed the maximum penalty for each offense. The record contains a no contest plea questionnaire, which Becker acknowledged signing. See *State v. Moederndorfer*, 141 Wis.2d 823, 827-28, 416 N.W.2d 627, 629-30 (Ct. App. 1987). An appellate challenge to the validity of Becker's no contest pleas would lack arguable merit.

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We now turn to the circuit court's sentencing in this matter. A trial court's sentencing decision involves the exercise of discretion. *McCleary v. State*, 49 Wis.2d 263, 277, 182 N.W.2d 512, 519 (1971). The consideration of three factors must guide the sentencing court: the gravity of the offense, the character of the defendant, and the need to protect the public. *State v. Wickstrom*, 118 Wis.2d 339, 355, 348 N.W.2d 183, 192 (Ct. App. 1984). A sentencing court misuses its discretion whenever it gives too much weight to one factor without regard to contravening considerations. *Harris v. State*, 75 Wis.2d 513, 518, 250 N.W.2d 7, 10 (1977). However, the court has discretion to determine the relative weight to be accorded to each of these factors. *Ocanas v. State*, 70 Wis.2d 179, 185, 233 N.W.2d 457, 461 (1975).

At sentencing, the trial court focused almost exclusively on the seriousness and sheer volume of Becker's offenses:

Well, this is almost an unbelievable situation here, how many cases we've got against Mr. Becker, how many cases are presented to the court, all with '95 prefixes, all charged in '95. To say, Mr. Becker, you are a one-man crime wave, I think would be understating the situation here.

Although the trial court's explanation for its sentencing decision was thin, the record submitted to the trial court at sentencing, including a description of Becker's history of alcohol abuse and personal violence, offered an adequate basis upon which to sustain the trial court's sentencing as a proper discretionary act. See *Wickstrom*, 118 Wis.2d at 355, 348 N.W.2d at 191. Further, the record does not contain any evidence that the trial court based its sentencing decisions on any improper factors or that it was "unduly harsh or excessive." See *State v. Daniels*, 117 Wis.2d 9, 22, 343 N.W.2d 411, 417-18 (Ct. App. 1983) ("A sentence well within the limits of the maximum sentence is not so disproportionate to the offense committed as to shock the public sentiment and violate the judgment of reasonable people concerning what is right and

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proper under the circumstances."). With respect to the potential issues that the sentences imposed were illegal or involved an improper calculation of sentence credit, we adopt the no merit report's discussion of these issues as our own.

Based upon this court's review of the record, this court is satisfied that there are no other issues of arguable merit that Becker could raise on appeal. Therefore, the judgments of conviction are affirmed and Attorney Margaret A. Maroney is relieved of further representation of Becker in these appeals.

By the Court. – Judgments affirmed.