COURT OF APPEALS
DECISION
DATED AND RELEASED

January 9, 1997

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. 96-1474-CR-NM
96-1475-CR-NM
96-1477-CR-NM
96-1479-CR-NM
96-1480-CR-NM
96-1481-CR-NM

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

GABRIEL J. ALWIN,

Defendant-Appellant.

APPEALS from judgments of the circuit court for Jefferson County: ARNOLD SCHUMANN, Judge. *Affirmed*.

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

PER CURIAM. Gabriel Alwin's counsel filed a no merit report pursuant to RULE 809.32, STATS. Alwin filed a response alleging that his guilty

and no contest pleas were not knowingly entered because he mistakenly believed he was eligible to be sentenced to the Division of Intensive Sanctions (DIS) and that his trial counsel was ineffective for failing to adequately review possible motives of witnesses to falsify their testimony. Upon our independent review of the record as mandated by ***Anders v. California***, 386 U.S. 738 (1967), we conclude that any challenge to Alwin's convictions or sentence would lack arguable merit.

Pursuant to a plea agreement, Alwin entered no contest pleas to burglary, theft of a firearm, furnishing a dangerous weapon to a child and two misdemeanor thefts. He also entered guilty pleas to four charges of felony bail-jumping. Other charges were dismissed, including three counts of intimidating a witness. The plea agreement reduced Alwin's maximum penalty from over 100 years to forty-seven years and three months. The plea agreement also required the State to cap its sentencing recommendation at ten years. The State actually recommended a sentence of eight years and nine months, and the court sentenced Alwin to six years in prison followed by four years' probation.

The no merit report addresses whether Alwin's guilty and no contest pleas were knowingly, intelligently and voluntarily entered; whether the trial court properly exercised its sentencing discretion; and whether trial counsel provided Alwin with effective assistance. Our independent review of the record confirms counsel's analysis of these issues. The trial court followed the procedures set out in ***State v. Bangert***, 131 Wis.2d 246, 260-62, 389 N.W.2d 12, 20-21 (1986), when it accepted Alwin's pleas. The court reminded Alwin of the constitutional rights he waived by entering guilty and no contest pleas, including the rights to cross-examine witnesses and to present a defense. A valid guilty or no contest plea constitutes a waiver of all nonjurisdictional defects and defenses. *See* ***State v. Aniton***, 183 Wis.2d 125, 129, 515 N.W.2d 302, 303 (Ct. App. 1994).

Alwin argues that his pleas were not knowingly entered because he believed he was eligible for DIS sentencing and therefore did not understand the consequences of his pleas. Alwin was eligible for DIS sentencing. The trial

court strongly considered imposing intensive sanctions, but concluded that the gravity of the offenses, Alwin's character and the need to protect the public made intensive sanctions inappropriate in this case.

Alwin argues that his trial counsel was deficient for failing to investigate the possible motives of witnesses to give false testimony. The State's plea offer was valid only until the start of the preliminary hearing. Therefore, counsel did not have an opportunity to cross-examine witnesses or conduct discovery into their possible motives. Trial counsel did employ a private investigator who spent at least twenty-nine hours investigating the case without discovering any helpful information. Alwin cites minor inconsistencies in the witnesses' statements to the police and discrepancies that could have been used to cross-examine witnesses had he chosen to go to trial. These inconsistencies and discrepancies do not support a claim of ineffective assistance of trial counsel for pursuing a negotiated plea. The prospect of vigorously cross-examining some of the witnesses to the crimes charged, when compared with the substantial concessions the State made in the plea agreement, reflects a reasonable strategy that cannot be second-guessed on appeal. *See* ***Strickland v. Washington***, 466 U.S. 668, 689 (1984).

Finally, there is no arguable merit to any challenge to the trial court's sentencing discretion. The trial court gave a reasoned explanation for the sentence based on the gravity of the offenses, Alwin's character and the need to protect the public. *See* ***State v. Larsen***, 141 Wis.2d 412, 427, 415 N.W.2d 535, 541 (1987). The court considered no improper factors and its sentence is not so excessive or disproportionate to the offenses as to shock public sentiment. *See* ***State v. Morales***, 51 Wis.2d 650, 657, 187 N.W.2d 841, 844 (1971).

Our independent review of the record discloses no other potential issues for appeal. Therefore, we relieve Attorney Boris Ouchakof of further representation of Alwin in this matter and affirm the judgments of conviction.

By the Court.—Judgments affirmed.