COURT OF APPEALS
DECISION
DATED AND RELEASED

October 23, 1997

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.

No. 96-2278-CR-NM

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

ROBERT J. KING,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Sauk County: PATRICK J. TAGGART, Judge. *Affirmed.*

Before Eich, C.J., Dykman, P.J., and Deininger, J.

PER CURIAM. Robert King appeals his conviction for first-degree sexual assault of a child, having pleaded no contest to the charge and having received a seventeen-year prison sentence, concurrent with a ten-year sentence from a prior conviction. King's counsel has filed a no merit report under ***Anders v. California***, 386 U.S. 738 (1967), and provided King a copy of the report. King

has elected not to respond. The no merit report addresses the single issue of whether a statement King gave police was voluntary or coerced. We will also examine whether the plea procedures were adequate and whether the sentence was excessive. Upon review of the record, we are satisfied that the no merit report properly analyzes the issue it raises, that the additional two issues warrant no further proceedings, and that King's appeal has no arguable merit. Accordingly, we adopt the no merit report, affirm the conviction, and discharge King's appellate counsel of his obligation to represent King further in this appeal.

First, the record shows that King entered an intelligent and voluntary no contest plea. Trial courts should not accept defendants' pleas unless the pleas are intelligent and voluntary. ***State v. Bangert***, 131 Wis.2d 246, 257, 389 N.W.2d 12, 19 (1986). The trial court followed the appropriate procedures, extensively questioning King about his plea and informing him of the rights his plea would waive. The trial court also ascertained King's knowledge of the proceedings and confirmed the existence of an adequate factual basis. King freely acknowledged that he was waiving valuable legal rights, such as the right to a jury trial and a unanimous verdict. In addition, before the combined plea-sentencing hearing, King signed a waiver-of-rights form and studied it with his counsel. The form described the rights King's no contest plea would give up. In that form, King expressed an understanding that his plea would waive such rights as his rights to remain silent, to confront and ask questions of witnesses, to compel the testimony of witnesses on his behalf by subpoena, and to require the prosecution to prove his guilt beyond a reasonable doubt. Without qualification, King admitted responsibility for his crime, and the trial court confirmed his plea's factual basis. In short, we see no defects in the plea proceedings.

Second, the trial court issued a proper sentence. Sentencing is a discretionary determination. ***State v. Macemon***, 113 Wis.2d 662, 667-68, 335 N.W.2d 402, 405-06 (1983). Trial courts base their sentences on factors such as the gravity of the offense, the character of the defendant, the public's need for protection, and the interests of deterrence. ***State v. Sarabia***, 118 Wis.2d 655, 673-74, 348 N.W.2d 527, 537 (1984). Here, the trial court issued a seventeen-year prison sentence for first-degree sexual assault of a child, concurrent with a ten-year sentence King had from a prior conviction, another sex offense. The parties dispensed with a presentence report, and the trial court accepted the parties' joint sentencing recommendation. This by itself demonstrates the reasonableness of King's sentence. The trial court also applied the relevant sentencing factors to King's crime, issuing a sentence that was commensurate with King's culpability, his criminal record, the severity of his crime, the public's need for protection, and the need to deter King and other like-minded wrongdoers from such criminal activity. In sum, the trial court's findings represent a balanced exercise of sentencing discretion, and we see nothing excessive in King's seventeen-year sentence.

Last, the trial court correctly denied King's motion to suppress his confession. This issue survived King's no contest plea. *See* ***State v. Esser***, 166 Wis.2d 897, 899 n.1, 480 N.W.2d 541, 542 (Ct. App. 1992). King sought to suppress his confession on the ground that it was not voluntary. Specifically, King claimed that his probation officer had coerced the confession by threatening revocation if he remained silent and promising leniency if he made a statement. The probation officer admitted telling King that he would "view positively" King's honest cooperation. However, the probation officer denied threatening revocation or promising leniency. Courts will suppress involuntary confessions

only if law enforcement officers evince affirmative, coercive conduct. *See* ***State v. Clappes***, 136 Wis.2d 222, 239, 401 N.W.2d 759, 767 (1987); ***State v. Albrecht***, 184 Wis.2d 287, 301, 516 N.W.2d 776, 782 (Ct. App. 1994). An accused's subjective belief of government coercion is not sufficient by itself to invalidate a confession; actual coercive conduct by a government official is necessary before courts may consider the accused's subjective beliefs. *See* ***Clappes***, 136 Wis.2d at 239, 401 N.W.2d at 767; ***Albrecht***, 184 Wis.2d at 301, 516 N.W.2d at 782.

Here, the trial court ruled that the probation officer had not coerced King's statement. The trial court accepted the probation officer's testimony that he had never threatened King with probation revocation or promised him leniency. As the fact-finder and the judge of witness credibility, the trial court could reasonably make this determination. ***Clappes***, 136 Wis.2d at 235, 401 N.W.2d at 765. The trial court also concluded that the probation officer had not coerced King in a ***Clappes*** and ***Albrecht*** sense by promising "to view positively" King's honest cooperation. Comments to accuseds about possible future legal consequences are often insufficient to constitute coercion. *Cf.* ***Salters v. State***, 52 Wis.2d 708, 712, 191 N.W.2d 19, 21 (1971). We see nothing exceptional about the probation officer's remark that would take it outside the ***Salters*** principle. The probation officer's remark was general. It was a fair comment on how King's honest cooperation might relate generally to his future rehabilitation and probation supervision; the officer told the trial court of his belief that acting honestly had therapeutic value for felons seeking to rehabilitate themselves. Viewed in that context, the remark did not qualify as an improper promise or threat in the ***Clappes*** or ***Albrecht*** sense. Accordingly, William J. Remington is discharged of his obligation to represent King further in this appeal.

By the Court.—Judgment affirmed.