

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

JULY 8, 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.

No. 96-2590-CR-NM

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

BYRON D. MITCHELL,

DEFENDANT-APPELLANT,

SHAWN BATES,

DEFENDANT.

APPEAL from a judgment of the circuit court for Milwaukee County: PATRICIA D. MC MAHON, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Schudson, JJ.

PER CURIAM. Byron D. Mitchell appeals from a judgment of conviction for first-degree intentional homicide and multiple counts of armed

robbery.¹ The state public defender appointed Attorney Matthew H. Huppertz as Mitchell's appellate counsel. Attorney Huppertz served and filed a no merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and RULE 809.32(1), STATS. Mitchell urges this court to reject the no merit report. After an independent review of the record as mandated by *Anders*, we conclude that any further appellate proceedings would lack arguable merit.

A jury found Mitchell guilty of first-degree intentional homicide while using a dangerous weapon, as a party to the crime, and an attempt of that same crime, contrary to §§ 940.01(1), 939.63(1)(a)2 and 939.05, STATS., and of two counts of armed robbery, as a party to the crimes, contrary to §§ 943.32(2) and 939.05, STATS. The trial court imposed a life sentence with a parole eligibility date of March 28, 2031 for the homicide, a forty-year consecutive sentence for the attempted homicide, and two, twenty-year consecutive sentences for the armed robberies.

The no merit report addresses the sufficiency of the evidence and whether the trial court erroneously exercised its sentencing discretion. We agree with appellate counsel's description, analysis, and conclusion that pursuing these issues would lack arguable merit.

After expiration of the response deadline under RULE 809.32(1), STATS., Mitchell moved to "oppose" the no merit report. He contends that the no merit procedure is unfair because counsel has more time to file a report, than the defendant has to respond. See RULE 809.32, STATS. We reject Mitchell's

¹ Co-defendant Shawn Bates does not appeal.

challenge to the no merit procedure as set forth by the United States Supreme Court in *Anders* and RULE 809.32.

Mitchell contends that without a complete copy of the record, he is unable to file a meaningful response. On March 18, 1997, we responded to Mitchell's concerns and noted that appellate counsel had forwarded copies of the trial transcripts to him on September 12, 1996. We also reviewed the index to the appellate record and forwarded copies of all significant documents to him. We then reminded him that he need only raise issues which he believes are arguably meritorious and we *sua sponte* extended his response deadline. We explained that this court is obliged to independently search the record to determine whether there are any arguably meritorious issues which would warrant further proceedings. Although Mitchell has not responded, we conclude that under these circumstances, we have afforded him ample time and materials to respond, if he had elected to do so.

Upon our independent review of the record as mandated by *Anders* and RULE 809.32(3), STATS., we conclude that there are no other meritorious issues and that any further proceedings would lack arguable merit. Accordingly, we affirm the judgment of conviction and relieve Attorney Matthew H. Huppertz of any further representation of Byron D. Mitchell in this appeal.

By the Court.—Judgment affirmed.

