COURT OF APPEALS
DECISION
DATED AND FILED

December 18, 1997

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

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

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.

Nos. 96-3598-CR-NM
96-3599-CR-NM
96-3600-CR-NM
96-3601-CR-NM
96-3602-CR-NM
96-3603-CR-NM

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ERIC J. YELK,

DEFENDANT-APPELLANT.

APPEAL from judgments and amended judgments of the circuit court for Jefferson County: JACQUELINE R. ERWIN, Judge. *Affirmed.*

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

PER CURIAM. Eric J. Yelk appeals from judgments and amended judgments of conviction for a multitude of property crimes and multiple counts of

bail jumping.[1] The state public defender appointed Attorney Norma Briggs as Yelk's appellate counsel. Attorney Briggs served and filed a no merit report pursuant to ***Anders v. California,*** 386 U.S. 738 (1967), and RULE 809.32(1), STATS. Yelk did not respond. After an independent review of the records as mandated by ***Anders***, we conclude that any further proceedings would lack arguable merit.

Yelk engaged in several criminal activities over an eight-month period, from June of 1995 through February of 1996. The trial court structured a collective sentence of fifty-two years in prison, followed by a ten-year term of probation.

On June 26, 1995, Yelk burglarized a building, as a party to the crime, contrary to §§ 943.10(1)(a) and 939.05, STATS. He pleaded guilty and the trial court imposed a three-year concurrent sentence.[2]

In late August of 1995, Yelk received stolen property, contrary to § 943.34(1)(a), STATS.,[3] and drove a vehicle without the owner's consent, contrary

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[1] In the interests of judicial economy, we consolidated these appeals by separate order and necessarily converted appeal No. 96-3598-CR-NM, seeking review of a judgment of conviction for a misdemeanor, for a decision by a three-judge panel. Although the trial court did not consolidate these cases, it considered the totality of these convictions when it imposed the sentences in these separate cases in a single hearing.

[2] Because all of the sentences were imposed at a single hearing, the concurrent/consecutive nature of each sentence must be considered in context with the other sentences imposed.

[3] Because the value of the property stolen was less than $1,000, this was a misdemeanor. *See* § 943.34(1)(a), STATS.

to § 943.23(2), STATS. Yelk pleaded guilty to these crimes and the trial court imposed concurrent sentences of nine months and five years.

On September 26, 1995, Yelk committed misdemeanor criminal trespass to a dwelling, contrary to § 943.14, STATS., to which he pleaded guilty. The trial court imposed a concurrent nine-month sentence.

On October 30, 1995, Yelk burglarized a motor home, contrary to § 943.10(1)(e), STATS., and committed theft, contrary to § 943.20(1)(a), STATS., and four counts of felony bail jumping, contrary to § 946.49(1)(b), STATS. Yelk pleaded guilty to these charges and the trial court imposed two-year sentences on each of the six crimes: one was imposed to run consecutive, while the others were imposed to run concurrent to one another.

On February 9, 1996, Yelk committed the crime of possession of a firearm by a felon, as a habitual criminal, contrary to §§ 941.29(2) and 939.62, STATS., and two counts of felony bail jumping, contrary to §§ 946.49(1)(b), STATS. He pleaded guilty to the firearm charge and no contest to the bail jumping charges.[4] The trial court imposed concurrent sentences of five years for the crime involving the firearm, and two, two-year sentences for the bail jumping. One of the bail jumping sentences was imposed to run consecutive to the other sentences.

On February 13, 1996, Yelk committed eight felonies, and was charged with each crime as a habitual criminal, contrary to § 939.62, STATS. He

[4] A no contest plea means that the defendant does not claim innocence, but refuses to admit guilt. Section 971.06(1)(c), STATS.; ***Cross v. State***, 45 Wis.2d 593, 599, 173 N.W.2d 589, 593 (1970).

pleaded guilty to operating a vehicle to flee from an officer, contrary to § 346.04(3), STATS., and the trial court imposed a five-year consecutive sentence. Yelk entered no contest pleas to burglary of a building, contrary to § 943.10(1)(a), STATS., two counts of robbery with the use of force, contrary to § 943.32(1)(a), STATS., false imprisonment, contrary to § 940.30, STATS., and two counts of felony bail jumping, contrary to § 946.49(1)(b), STATS. The trial court imposed sentences of twenty, thirty-five and five years for the burglary, robbery and false imprisonment charges. The five-year sentence was imposed to run consecutive to the thirty-five and twenty-year sentences, which were imposed to run concurrent to one another. The trial court imposed two, two-year concurrent sentences for the two bail jumping charges. Yelk also entered a no contest plea to operating a vehicle without consent and while possessing a dangerous weapon, contrary to § 943.23(1g), STATS. On that charge and on one of the robbery charges, the trial court withheld sentence and imposed two, ten-year terms of probation, to run concurrent to one another, but consecutive to Yelk's prison terms.

Although not addressed in the no merit report, we independently conclude that there is no arguable basis to challenge Yelk's guilty and no contest pleas. Our independent review of the records demonstrates that Yelk entered his pleas knowingly, intelligently and voluntarily. He signed waiver of rights forms, in which he stipulated to the court's use of the complaints as factual bases for his pleas. During the plea colloquy, either the trial court or the prosecutor recited the elements of each of these offenses, and Yelk confirmed his understanding of the crimes and the ramifications of his pleas. We conclude that the trial court fully

satisfied the requirements of § 971.08(1), STATS., and ***State v. Bangert,*** 131 Wis.2d 246, 267-72, 389 N.W.2d 12, 23-25 (1986).

The no merit report addresses the two concerns which Yelk raised in his conversations with appellate counsel, which are whether the trial court erroneously exercised its sentencing discretion, and whether Yelk received the effective assistance of trial counsel. We independently conclude that further proceedings on pursuing these issues would lack arguable merit.

Yelk told appellate counsel that he believed that the fifty-two-year sentence followed by a ten-year term of probation was excessive. Our review of a sentence is limited to whether the trial court erroneously exercised its discretion. *See* ***State v. Larsen***, 141 Wis.2d 412, 426, 415 N.W.2d 535, 541 (Ct. App. 1987). The primary sentencing factors are the gravity of the offense, the character of the offender, and the need for public protection. ***Id***. at 427, 415 N.W.2d at 541. It is within the trial court's discretion to decide what weight to accord each sentencing factor. *See* ***Cunningham v. State***, 76 Wis.2d 277, 282, 251 N.W.2d 65, 67-68 (1977). It also is within the trial court's discretion to determine whether multiple sentences are to run concurrently or consecutively. *See* ***Larsen,*** 141 Wis.2d at 427, 415 N.W.2d at 541.

The trial court considered the gravity of the offenses. It summarized these crimes chronologically and commented on their collective seriousness and their impact on Yelk's victims. It considered the character of the offender, and summarized Yelk's troubled childhood and adolescence, his problems with attention deficit disorder and hyperactivity, and his abandonment of school and

therapy. The trial court noted that Yelk was not chemically dependent, or involved with gangs. It rejected Yelk's expression of remorse and noted his continued problems, as evidenced by the bail jumping convictions. It considered the protection of the public, and noted Yelk's record of serious crimes and concluded "that there is not a single key to halting the rampage that you've inflicted on Jefferson County except for incarceration." A challenge to the sentences imposed for convictions of all of these crimes within eight months would lack arguable merit.

Yelk also claimed that he received ineffective assistance of trial counsel because counsel "did not spend enough time" with him. Appellate counsel emphasizes that Yelk did not claim that he did not understand the consequences of his pleas, or that he would have pleaded differently, merely that he believed trial counsel should have spent more time with him.

To prevail on an ineffective assistance claim, Yelk must demonstrate that his trial counsel's deficient performance prejudiced his defense. *See* ***Strickland v. Washington,*** 466 U.S. 668, 687 (1984). Yelk's limited claim that trial counsel "did not spend enough time with him" does not allege either deficient performance or prejudice, much less both. The records refute Yelk's claim because at the plea hearing Yelk confirmed that he "ha[d] enough time to discuss these matters with [his trial counsel]," and that he had no unanswered questions about the proceedings before entering his pleas. Additionally, Yelk told the trial court that he was satisfied with his representation. Under these circumstances, we conclude that filing a postconviction motion claiming ineffective assistance of trial counsel would lack arguable merit.

Upon our independent review of the records, as mandated by ***Anders*** and RULE 809.32(3), STATS., we conclude that there are no other meritorious issues and that any further appellate proceedings would lack arguable merit. Accordingly, we affirm the judgments and amended judgments of conviction and relieve Attorney Norma Briggs of any further representation of Eric J. Yelk.

By the Court.—Judgments and amended judgments affirmed.