

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

OCTOBER 7, 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. 97-0028-CR-NM

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

JASON A. KRYSHESKI,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Marinette County:
TIM A. DUKET, Judge. *Affirmed.*

Before Cane, P.J., Myse and Hoover, JJ.

PER CURIAM. Counsel for Jason Krysheski has filed a no merit report pursuant to RULE 809.32, STATS. Krysheski has responded to the report. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude that there is no arguable merit to any issue that

could be raised on appeal. We therefore affirm the trial court's judgment and order.

The State charged Krysheski with armed burglary, attempted first-degree intentional homicide, carrying a concealed weapon, theft and battery. The State produced evidence at trial showing that Krysheski and an accomplice, Laughlin, broke into a property owner's garage and removed tools and other valuable items. A passerby, James Konop, observed the burglary in progress and drove down the road to call police. He was returning to the scene when his vehicle collided with Krysheski's. Krysheski climbed out of his truck, severely beat Konop, and pointed a pistol in his face and threatened to kill him. Laughlin intervened at that time, and the two left the scene.

The State charged attempted first-degree intentional homicide on the theory that Krysheski would have shot Konop but for Laughlin's intervention. In charging armed burglary, the State asked the jury to infer that Krysheski was carrying the pistol he used to threaten Konop when he committed the burglary.

The State asked for and the court allowed verdict questions on whether Krysheski was guilty of the lesser included offenses of burglary, to the armed burglary charge, and first-degree recklessly endangering safety on the attempted homicide charge. The jury found Krysheski guilty on these two lesser included offenses. It also found him guilty on the three misdemeanor charges, carrying a concealed weapon, theft, and battery. The court sentenced Krysheski, as repeater, to the maximum sixteen- and eleven-year terms on the two felony counts, to be served consecutive to each other and to the eleven years Krysheski was presently serving on two unrelated felony convictions. The court also imposed concurrent three-year terms on the three misdemeanors. The primary

rationales for the sentence were Krysheski's long criminal record and the serious and violent nature of his conduct on this occasion.

Counsel's no merit report notes that Krysheski testified and admitted the burglary, theft and battery charges, and notes that the trial essentially concerned the conflicting testimony as to whether Krysheski had a gun and whether he threatened Konop with it. Counsel identifies as potential issues whether the proceeding violated Krysheski's right to a speedy trial, whether the jury selection process violated his constitutional rights to a randomly chosen jury, whether jurors observed him in shackles during a lunch break at the trial, whether the trial court properly added verdict questions on the lesser included offenses, whether the prosecution introduced sufficient credible evidence to convict him, whether the trial court properly exercised its sentencing discretion, and whether trial counsel provided effective assistance. We conclude that appellate counsel's analysis of these issues is correct in all respects, as is his conclusion that none have merit.

In his two responses to counsel's no merit report, Krysheski challenges the credibility of Laughlin and Konop, alleges that trial counsel provided ineffective assistance, asserts that he was innocent and protests what he views as an excessive sentence. However, Krysheski merely presents conclusory statements on each of these issues, and provides no arguments specifically pertaining to the record of his trial or sentencing. In any event, the court has the benefit of counsel's report on each of these issues, and has independently reviewed the record as to each. We advise Krysheski, as did counsel in his report, that we cannot review the jury's credibility determinations. *See State v. Toy*, 125 Wis.2d 216, 222, 371 N.W.2d 386, 389 (Ct. App. 1985).

Our independent review of the record discloses no other potential issues for appeal. We therefore affirm the judgment of conviction and relieve Krysheski's counsel of any further representation of him in this matter.

By the Court.—Judgment affirmed.

