

**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.

No. 97-2069-CR-NM

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

DANNIE THOMAS,

DEFENDANT-APPELLANT.

APPEAL from judgments of the circuit court for Dane County:
SARAH B. O'BRIEN, Judge. *Affirmed and cause remanded with directions.*

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

PER CURIAM. Appointed counsel for Dannie Thomas, Attorney Glenn L. Cushing, has filed a no merit report pursuant to RULE 809.32, STATS. Counsel provided Thomas with a copy of the report, and he has responded to it. Upon our independent review of the record as mandated by *Anders v.*

California, 386 U.S. 738 (1967), we conclude there is no arguable merit to any issue that could be raised on appeal.

This case arises from two separate criminal complaints. In the first, Thomas was charged with nine counts of uttering a forged instrument, § 943.38(2), STATS., between June 5 and June 10, 1996. In the second, Thomas was charged with one count of making a forged instrument and thirteen counts of uttering a forged instrument between May 31 and June 7, 1996. The cases were resolved together. Thomas pleaded no contest to five counts in each case, and the remainder were dismissed and read in. The court sentenced him to consecutive prison terms of six, six, and five years on the first three counts, and withheld sentence and placed him on twenty-years concurrent probation on the remaining counts.¹

The no merit report first addresses whether Thomas's pleas were entered knowingly, voluntarily and intelligently. At the plea hearing the trial court reviewed the nature of the charges with Thomas and determined that he understood them, reviewed the rights he was waiving with his plea, and inquired as to his background and state of mind. There would be no arguable merit to arguing that the plea colloquy was inadequate under the standards provided in *State v. Bangert*, 131 Wis.2d 246, 389 N.W.2d 12 (1986).

The no merit report next addresses whether the court erroneously exercised its discretion in sentencing Thomas. He faced a maximum potential

¹ The judgment of conviction in Case No. 96-CF-1288 appears to misstate which counts Thomas pleaded no contest to. It is clear from the transcript and court minutes of the plea hearing that Thomas pleaded on counts 1, 10, 11, 15, and 19. The judgment shows him as convicted on counts 1, 5, 6, 10, and 14. This error is significant because Thomas was not even a defendant in counts 5 and 6, which related solely to his co-defendant.

penalty of ten-years in prison and a \$10,000 fine on each count. In sentencing Thomas, the court considered his prior record, his cooperation with the authorities after he was apprehended and the nature of these offenses. There would be no arguable merit to arguing that the sentences were improper under the relevant standards. See *State v. Thompson*, 172 Wis.2d 257, 263-65, 493 N.W.2d 729, 732-33 (Ct. App. 1992).

In his response to the no merit report, Thomas argues that his sentences are excessive because multiple punishments are inappropriate when the acts for which punishment is to be imposed are so close in time that they are to be treated as one. He cites *State v. Tappa*, 127 Wis.2d 155, 378 N.W.2d 883 (1985). That case actually relates to how crimes can be charged, rather than to sentencing. However, regardless of how the issue is viewed, there would be no arguable merit to this argument. Thomas's crimes were not sufficiently close in time. The criminal complaints show that, while each count may have been part of a larger scheme, they involved separate documents and a variety of locations and victims, over a period of several days. Thomas also relies on federal sentencing guidelines. However, those guidelines are not relevant to these proceedings in state court.

Our review of the record discloses no other potential issues for appeal.

Attorney Glenn L. Cushing is relieved of further representing Thomas in this matter.

On remand, the clerk of the circuit court shall enter an amended judgment which corrects the error identified in footnote one above.

By the Court.—Judgments affirmed and cause remanded with directions.

