

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 11, 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. 97-2570-CR-NM

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

TOREY U. JENNINGS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County:
MICHAEL N. NOWAKOWSKI, Judge. *Affirmed.*

EICH, C.J.¹ Counsel for Torey Jennings has filed a no merit report pursuant to RULE 809.32, STATS. Jennings has not responded to the report. Upon our independent review of the record as mandated by *Anders v. California*, 386

¹ This case is decided by one judge pursuant to § 752.31(2)(f), STATS.

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.

The State charged Jennings on one felony count for false imprisonment, and two misdemeanor counts for battery and intimidation of a victim. Pursuant to a plea bargain, Jennings pled no contest to the two misdemeanors, and the State dismissed the felony. On the parties' recommendation, the trial court withheld judgment and assigned Jennings to a first offenders program. He subsequently failed to complete the program and was returned to court for sentencing and entry of the judgment. The court withheld sentence and gave Jennings concurrent two-year probation terms. As conditions of probation, the court ordered Jennings to serve sixty days in jail and to participate in aggression counseling.

Jennings cannot succeed on a motion to withdraw his plea because he knowingly and voluntarily pled no contest. Before accepting the plea, the court established that Jennings understood and waived his rights to a jury trial. The court also inquired whether Jennings understood the plea questionnaire he signed, which outlined the rights he was surrendering, including the right to confront witnesses and the right to remain silent. Jennings indicated he read and understood the questionnaire, demonstrating that he appreciated the constitutional rights he was giving up. See *State v. Moederndorfer*, 141 Wis.2d 823, 827-28, 416 N.W.2d 627, 629-30 (Ct. App. 1987). The court adequately informed Jennings of the elements of the crimes charged and the potential punishment. The court also properly inquired as to Jennings's ability to understand the proceedings, and the record independently establishes that he understood the proceedings. The State did not improperly induce Jennings to plead no contest, and Jennings exercised his free will in accepting the plea bargain. Finally, the court determined

that an adequate factual basis existed for the charges. The court therefore complied with the requirements set forth in *State v. Bangert*, 131 Wis.2d 246, 261-62, 389 N.W.2d 12, 21 (1986), to ensure a knowing and voluntary plea.

The trial court properly exercises its sentencing discretion if it relies on appropriate factors and the sentence is not excessive. *State v. Krueger*, 119 Wis.2d 327, 336-37, 351 N.W.2d 738, 743 (Ct. App. 1984). We presume the trial court acted properly in sentencing the defendant and the burden is on the defendant to prove otherwise. *Id.* at 336, 351 N.W.2d at 743. Jennings could have received an eighteen-month jail term and a \$20,000 fine. *See* §§ 940.19(1) and 940.44(1), STATS. At the sentencing hearing, the court heard and deemed credible testimony that he battered and intimidated his live-in girlfriend as charged in the complaint, and that she had suffered other incidents of abuse from him. The court described his behavior on these occasions as unacceptable and aggravated but deemed probation appropriate because Jennings had no other convictions. Given the court's findings and the potential penalties available, Jennings cannot reasonably contend that his sentence was excessive or otherwise an erroneous exercise of discretion. We conclude the trial court properly sentenced Jennings.

Appellate counsel's review of the record discloses no other potentially meritorious issues. Upon our independent review of the record as mandated by *Anders*, we also conclude that there are no other potentially meritorious issues and that any further proceedings would be frivolous and without arguable merit. Accordingly, we affirm the judgment of conviction and relieve Jennings's counsel of any further representation of him in this matter.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.

