

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 1, 1998

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. 98-1294-CR-NM
98-1295-CR-NM**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DONALD T. FRAVERT,

DEFENDANT-APPELLANT.

APPEAL from judgments of the circuit court for Clark County:
MICHAEL W. BRENNAN, Judge. *Affirmed.*

VERGERONT, J. In these consolidated appeals, Donald T. Fravert appeals from judgments convicting him of misdemeanor theft contrary to § 943.20(1)(a), STATS., and misdemeanor bail jumping contrary to § 946.49(1)(a), on his no contest pleas. Fravert was sentenced to a total of nine months in jail.

Fravert's appellate counsel filed a no merit report pursuant to RULE 809.32, STATS., and *Anders v. California*, 386 U.S. 738 (1967). The report discusses the entry of Fravert's no contest pleas and his sentence. Fravert received a copy of the report and was advised of his right to file a response. He has not done so. Upon consideration of the report and an independent review of the record as mandated by *Anders*, we conclude that there is no arguable merit to any issue that could be raised on appeal. Therefore, we affirm the judgments of conviction.

Our review of the record discloses that Fravert's no contest pleas were knowingly, voluntarily and intelligently entered. See *State v. Bangert*, 131 Wis.2d 246, 260, 389 N.W.2d 12, 20 (1986). The court confirmed that Fravert desired to plead no contest to the charges, advised Fravert of the maximum possible punishment for the crimes, and confirmed that Fravert had signed plea questionnaires relating to the crimes. The court discussed the constitutional rights waived by a no contest plea. The questionnaires set forth the elements of the crimes and the court determined that the criminal complaints established a factual basis for the pleas. The court then accepted Fravert's pleas as having been knowingly, voluntarily and intelligently entered.

Based on the plea colloquy, we conclude that a challenge to Fravert's no contest pleas as unknowing or involuntary would lack arguable merit. The plea questionnaires are competent evidence of knowing and voluntary pleas. See *State v. Moerderdorfer*, 141 Wis.2d 823, 827-29, 416 N.W.2d 627, 629-30 (Ct. App. 1987). Furthermore, Fravert's pleas waived any nonjurisdictional defects and defenses, including claimed violations of constitutional rights. *County of Racine v. Smith*, 122 Wis.2d 431, 434, 362 N.W.2d 439, 441 (Ct. App. 1984).

We have also independently reviewed the sentence. Sentencing lies within the sound discretion of the trial court, and a strong policy exists against appellate interference with that discretion. See *State v. Haskins*, 139 Wis.2d 257, 268, 407 N.W.2d 309, 314 (Ct. App. 1987). The primary factors to be considered by the trial court in sentencing are the gravity of the offense, the character of the offender and the need for protection of the public. See *State v. Harris*, 119 Wis.2d 612, 623, 350 N.W.2d 633, 639 (1984). The weight to be given to these factors is within the trial court's discretion. See *Cunningham v. State*, 76 Wis.2d 277, 282, 251 N.W.2d 65, 67-68 (1977). Our review of the sentencing transcript reveals that the court considered the appropriate factors, particularly the gravity of the offense and Fravert's character as demonstrated by his lengthy history of criminal offenses.

Because there is no arguable merit to any issue that could be raised on appeal, we affirm the judgments of conviction and relieve Attorney Patrick M. Donnelly of further representation of Donald T. Fravert in this matter.

By the Court.—Judgments affirmed.

