

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 19, 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.

No. 98-1755-CR-NM

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

DIONIA O. SCOTT,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Jackson County:
ROBERT W. RADCLIFFE, Judge. *Affirmed.*

Before Dykman, P.J., Roggensack and Deininger, JJ.

PER CURIAM. Diona O. Scott appeals a judgment convicting him of distributing cocaine to a prisoner within a prison contrary to §§ 961.41(1)(cm) and 961.465(2), STATS. Scott received a five-year sentence after he entered a guilty plea. Scott's appellate counsel filed a no merit report pursuant to RULE 809.32, STATS., and *Anders v. California*, 386 U.S. 738 (1967). Scott 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 judgment of conviction.

Our review of the record discloses that Scott's guilty plea was 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 Scott desired to plead guilty. The court advised Scott of the charge to which he had agreed to enter a plea, and confirmed Scott's age and education, his understanding of the proceedings and his interactions with counsel, and the maximum possible penalty for the offense. The court enumerated the various constitutional rights waived by a guilty plea and confirmed that Scott understood those rights and that counsel had explained the elements of the offense. The court ascertained that Scott's counsel believed that Scott understood the proceedings and that counsel had reviewed the case thoroughly with Scott prior to the plea hearing. The court then accepted Scott's plea as having been knowingly, voluntarily and intelligently entered.

Based on the plea colloquy, we conclude that a challenge to Scott's guilty plea as unknowing or involuntary would lack arguable merit. Furthermore, Scott's plea waived any nonjurisdictional defects and defenses, including claimed violations of constitutional rights. See *County of Racine v. Smith*, 122 Wis.2d 431, 434, 362 N.W.2d 439, 441 (Ct. App. 1984). Additionally, the guilty plea questionnaire and waiver of rights form Scott signed is competent evidence of a knowing and voluntary plea. See *State v. Moederndorfer*, 141 Wis.2d 823, 827-29, 416 N.W.2d 627, 629-30 (Ct. App. 1987).

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. The court considered Scott's lack of remorse, the gravity of his offense, his character and the degree of his culpability. The five-year sentence imposed by the trial court did not exceed the statutory maximum. The trial court properly exercised its sentencing discretion.

We conclude that there is no arguable merit to any issue that could be raised on appeal. Therefore, we affirm the judgment of conviction and relieve Attorney David L. Grace of further representation of Dionia O. Scott in this matter.

By the Court.—Judgment affirmed.

