

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

**JULY 16, 1996**

**NOTICE**

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.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

**No. 95-3305-CR-NM**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

**STATE OF WISCONSIN,**

**Plaintiff-Respondent,**

**v.**

**MARK V. REID,**

**Defendant-Appellant.**

APPEAL from a judgment and an order of the circuit court for Langlade County: JAMES P. JANSEN, Judge. *Affirmed.*

CANE, P.J. Mark V. Reid appeals from a judgment convicting him of retail theft,<sup>1</sup> in violation of § 943.50(1m), STATS., and an order denying his modification of sentence. After accepting Reid's guilty plea, the trial court imposed a six-month sentence. The trial court stayed the sentence and placed Reid on two years of probation with the conditions that he pay a \$100 fine and court costs and that he serve twenty days in jail.

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<sup>1</sup> Reid admitted to stealing a box of granola bars from a convenience store.

Reid's counsel, Attorney James Connell, filed a no merit report pursuant to RULE 809.32, STATS., and *Anders v. California*, 386 U.S. 738 (1967). Reid elected not to file a response to the no merit report.

The no merit report identified two potential issues: (1) whether the trial court misused its discretion at sentencing, and (2) whether the trial court erred in denying Reid's motion for sentence modification. This court reviewed the record and concluded that the trial court did not misuse its discretion at sentencing or in denying Reid's motion for sentence modification. This court adopts the no merit report's discussion of these issues as its own.

Further review of the record disclosed that the trial court may have violated a number of the plea colloquy requirements set forth in § 971.08, STATS., and *State v. Bangert*, 131 Wis.2d 246, 267-72, 389 N.W.2d 12, 23-25 (1986), justifying a withdrawal of Reid's guilty plea. However, Reid subsequently waived his right to appeal this potential violation.<sup>2</sup> Accordingly, appellate review of this issue is foreclosed.

Based upon review of the record, this court concludes that any further appellate proceedings on Reid's behalf would be frivolous and wholly without arguable merit within the meaning of *Anders* and RULE 809.32, STATS. Accordingly, the judgment of conviction and order are affirmed. Attorney Connell is relieved of any further representation of Reid in this appeal.

*By the Court.* – Judgment and order affirmed.

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<sup>2</sup> On May 17, 1996, this court directed counsel to contact Reid and discuss with him the prospect of withdrawing his plea and the practical consequences attendant to it. Counsel was directed to take certain alternative courses of action, depending upon Reid's decision. Reid did not respond to his counsel's correspondence explaining his options. Under these circumstances, Reid's silence is construed as acquiescence to continuing his appeal under RULE 809.32, STATS., and waiver of an appeal as of right on this issue. See *State ex rel. Flores v. State*, 183 Wis.2d 587, 617, 516 N.W.2d 362, 372 (1994). Accordingly, Attorney Connell's motion to withdraw from this appeal prior to our disposition of it is denied.