

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

December 18, 1996

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.

NOTICE

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

No. 96-0687-CR-NM

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

PAUL L. GEORGE,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Racine County:
DENNIS J. BARRY, Judge. *Affirmed.*

SNYDER, J. Paul L. George appeals from a judgment of conviction for negligent operation of a motor vehicle and disorderly conduct.¹ The state public defender appointed Attorney Jack E. Schairer as George's appellate counsel. Schairer served and filed a no merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and RULE 809.32(1), STATS. George filed a response. After an independent review of the record as mandated by *Anders*, we conclude that any further appellate proceedings would lack arguable merit.

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

George pled guilty to two counts of negligent operation of a motor vehicle contrary to § 941.01, STATS., and to disorderly conduct contrary to § 947.01, STATS.² The trial court withheld sentence on the negligent operation convictions and imposed two concurrent two-year terms of probation with conditions, which included a thirty-day jail term, twenty days of which were stayed. The trial court imposed a fine on the disorderly conduct conviction and required payment of the fine and court costs within sixty days to avoid serving an additional four days in jail.

The no merit report explains that George was charged with recklessly endangering safety, a Class D felony with a sentencing exposure of five years, but that he ultimately plea bargained that charge to three misdemeanors and a recommendation of a withheld sentence and two years probation, conditioned upon serving ten days in the county jail.³ Appellate counsel addresses George's indecision and reluctance to plead guilty and emphasizes the procedural proprieties with which the trial court accepted George's plea, after considerable discussion among George, his counsel and the trial court. The no merit report addresses whether George's guilty plea was entered knowingly, intelligently and voluntarily, and whether the trial court erroneously exercised its sentencing discretion. We agree with counsel's description, analysis and conclusion that pursuing these appellate issues would lack arguable merit.

George files a response in which he emphasizes factual discrepancies between his version of events and the version alleged in the complaint and developed at the preliminary hearing. Appellate counsel acknowledged that George's version of events constituted a potential defense to the charge, but that his version differed from that of the other witnesses. However, these factual discrepancies are what the record clearly establishes George knew could only be resolved if the case proceeded to trial. George

² Although George pled guilty, he has consistently maintained his innocence. Consequently, George's plea could more accurately be described as an *Alford* plea, which waives a trial and constitutes consent to the imposition of sentence despite the defendant's claimed innocence, although it has the same effect as a guilty plea. *North Carolina v. Alford*, 400 U.S. 25, 32, 37-38 (1970); *State v. Garcia*, 192 Wis.2d 845, 856-60, 532 N.W.2d 111, 115-17 (1995).

³ The trial court adopted the parties' joint sentencing recommendation. The condition of jail time was actually a thirty-day term, twenty days of which were stayed.

waived the right to argue these factual discrepancies and to raise a potential defense by pleading guilty to reduced charges.⁴ See *State v. Riekkoff*, 112 Wis.2d 119, 123, 332 N.W.2d 744, 746 (1983) (a guilty plea waives all nonjurisdictional defects and defenses).

In his response, George claims that his counsel compelled him to plead guilty. The trial court anticipated this issue and extensively demonstrated that the decision to plead guilty was made by George and not by his counsel. George further represented to the trial court that he was satisfied with his counsel's representation. We are not persuaded that George's claimed change of heart, which is contradicted by the record, lends any arguable merit to pursuing further relief.

Upon our independent review of the record as mandated by *Anders* and RULE 809.32(3), STATS., we conclude that there are no other meritorious issues and that any further appellate proceedings would lack arguable merit. Accordingly, we affirm the judgment of conviction and relieve Attorney Jack E. Schairer of any further appellate representation of George.

By the Court. – Judgment affirmed.

⁴ When the trial court accepted George's plea, it was satisfied that the complaint established a sufficient factual basis for the convictions.