

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

AUGUST 20, 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. 96-1228-CR-NM

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

ROBERT J. OLDS,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Forest County:
MARK A. MANGERSON, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Robert Olds appeals from a judgment of conviction for aggravated battery with a dangerous weapon. Olds' appellate counsel has filed a no merit report pursuant to RULE 809.32, STATS., and *Anders v. California*, 386 U.S. 738 (1967). Olds received a copy of the report and was advised of his right to file a response. He has elected not to do so. Upon consideration of the report and an independent review of the record, we

conclude that there is no arguable merit to any issue that could be raised on appeal.

Olds was charged with attempted first-degree intentional homicide and aggravated battery with a dangerous weapon for the April 5, 1995 stabbing of Lori McGeshick. A motion challenging the sufficiency of the complaint and the allegedly duplicitous nature of the charges was denied. The bindover was challenged as well by a separate motion. Olds also moved to suppress statements made to law enforcement officers and to suppress physical evidence recovered at McGeshick's residence. Initially, Olds entered a plea of not guilty by reason of mental disease or defect, and Dr. Frederick Fosdahl was appointed by the court to examine Olds. Later, pursuant to a plea agreement, Olds entered a no contest plea to the aggravated battery charge. The attempted homicide charge was dismissed and the trial court sentenced Olds to thirteen years' imprisonment.

The no merit report only addresses potential issues regarding the sentence. Therefore, we have independently reviewed the record to determine if there is any arguable merit to a claim that Olds' plea was defective because it was entered involuntarily, unknowingly and unintelligently, or because no factual basis existed to support it. The transcript of the plea proceeding establishes that the trial court complied with the necessary procedures. Although the court did not discuss the waiver of each of Olds' constitutional rights, it was not required to do so. See *State v. Moederndorfer*, 141 Wis.2d 823, 827, 416 N.W.2d 627, 629 (Ct. App. 1987). The trial court engaged in a colloquy with Olds sufficient to establish that Olds understood that, by signing a waiver form, he was waiving the constitutional and other rights detailed therein. See *State v. Hansen*, 168 Wis.2d 749, 754-55, 485 N.W.2d 74, 76-77 (Ct. App. 1992). Based on the record regarding the entry of Olds' plea, no arguable merit exists to support a claim that it was entered in violation of his constitutional or statutory rights.

A plea of guilty or no contest, when knowingly and voluntarily made, waives all nonjurisdictional defects and defenses. *State v. Andrews*, 171 Wis.2d 217, 223, 491 N.W.2d 504, 506 (Ct. App. 1992). Although the record does not reveal whether Olds was actually examined by Dr. Fosdahl, the defense was waived. Nothing suggests that the waiver was inappropriate.

We next consider whether there is arguable merit to a challenge to the trial court's denial of Olds' motions to suppress statements and evidence. An exception to the plea waiver rule permits review of trial court orders denying motions to suppress evidence or determining that statements of the defendant are admissible into evidence. *See* § 971.31(10), STATS.

The trial court found that McGeshick gave consent to search her residence. It also found that Olds had not established standing to challenge the search of the residence. The statements Olds made both before and after he was advised of his *Miranda* rights were found to be voluntary. The statements were not made to any inquiries of law enforcement officials. Olds' invocation of his right to remain silent after being given his *Miranda* warnings was honored. Statements he made after that time were volunteered.

When an appellate court reviews an order denying a motion to suppress the evidence, it will uphold the trial court's findings of fact unless they are against the great weight and clear preponderance of the evidence. *State v. Krier*, 165 Wis.2d 673, 676, 478 N.W.2d 63, 65 (Ct. App. 1991). The trial court's findings are supported by the evidence adduced at the evidentiary hearing. There is no meritorious challenge to the denial of Olds' motions to suppress.

The no merit report addresses whether the sentence was a result of a misuse of discretion or is subject to modification based on new factors. Counsel correctly notes that Olds' rehabilitative progress in prison and his belief that McGeshick did not sustain as severe of wounds as the trial court believed are not new factors.

Appellate counsel also concludes, and we agree, that the trial court properly exercised its sentencing discretion and that an appeal on that question would be frivolous. The sentence is based on the facts of record and appropriate considerations. It was the sentence that was the joint recommendation of the parties under the plea agreement. The trial court noted that the wounds inflicted were dangerously close to taking the victim's life. It acknowledged that the entire confrontation was fueled by alcohol abuse. The length of the sentence is reflective of consideration of Olds' rehabilitative needs. We cannot conclude that the sentence is unduly harsh or excessive.

Our review of the record discloses no other potential issues for appeal. We conclude that any further proceedings on Olds' behalf would be frivolous and without arguable merit within the meaning of *Anders* and RULE 809.32(1), STATS. Accordingly, the judgment of conviction is affirmed, and Attorney Daniel Bissett is relieved of any further representation of Olds on this appeal.

By the Court. – Judgment affirmed.