

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

NOTICE

May 8, 1997

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.

Nos. 96-1595-CR-NM and 96-1596-CR-NM

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ALVIN E. MOORE,

DEFENDANT-APPELLANT.

APPEALS from judgments of the circuit court for Dane County:
MICHAEL B. TORPHY, JR., Judge. *Affirmed.*

Before Eich, C.J., Dykman, P.J., and Vergeront, J.

PER CURIAM. Counsel for Alvin Moore has filed a no merit report pursuant to Rule 809.32, STATS. Moore has not responded to the report. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude that there is no arguable merit to any issue that

could be raised on appeal. We therefore summarily affirm the trial court's judgment.

In 1986, Moore pleaded no contest to first-degree reckless injury by use of a dangerous weapon. In 1992, while in jail on a probation hold, he battered another prisoner. Moore pleaded guilty to that charge, and again received probation. In 1994, his probation on both charges was revoked after police apprehended him while he was carrying a concealed billy club. At his subsequent sentencing, he received concurrent seven and four-year prison terms and judgment was entered accordingly. Moore takes this no merit appeal from that sentencing decision.

The trial court properly exercised its sentencing discretion after revocation. Sentencing lies within the trial court's discretion 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 trial court is presumed to have acted reasonably and the defendant has the burden to show unreasonableness from the record. *See id.* Here, the trial court concluded that a prison sentence was necessary after reviewing Moore's extensive history of noncompliance with the terms of his probation and his inability to change the behavior pattern that resulted in his violent criminal activity. Those were reasonable factors for the trial court to consider, and justified a prison sentence after Moore's utter failure to succeed with his probation. Additionally, Moore cannot reasonably contend that his sentences were excessive. He faced potential sentences totaling twenty years, and received sentences totaling seven.

Because of Moore's continuing problems while on probation, he received a one-year jail term as a modified condition of probation in 1993, and

subsequently had his probation extended for two years. In his no merit report, counsel states that Moore believes that the modifications to his probation were unlawful. However, he did not timely appeal from the trial court's modification orders. This appeal only concerns the judgment entered upon sentence after revocation.

The record in Moore's case indicates that a sentence credit issue remains unresolved. Moore could conceivably contend that additional trial court proceedings were necessary to resolve the matter. However, § 973.155(5), STATS., provides that where the matter of sentence credit is not resolved by the trial court, the defendant may petition the Department of Corrections for credit. Here, the problem appears to be computation rather than entitlement. Further proceedings in the trial court are therefore unnecessary at this time.

Our independent review of the record discloses no other potentially meritorious issues. We therefore conclude that any further proceedings would be frivolous and without arguable merit. Accordingly, we affirm the trial court's judgment and relieve Moore's counsel of any further representation of him in this matter.

By the Court.—Judgments affirmed.

