COURT OF APPEALS
DECISION
DATED AND RELEASED

November 27, 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. 96-2249-CR-NM

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JUSTIN HAWKINS,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Rock County: EDWIN C. DAHLBERG, Judge. *Affirmed*.

Before Eich, C.J., Vergeront and Roggensack, JJ.

PER CURIAM. Justin Hawkins appeals from a judgment of conviction entered after he pled guilty to one count of first-degree reckless injury and to one count of robbery, with use of force, both as party to a crime.

Hawkins also entered an ***Alford***[1] plea to one count of burglary. The court sentenced Hawkins to ten years on each count, to be served consecutively.

Hawkins's appellate counsel, Attorney Carl W. Chesshir, has filed a no merit report pursuant to RULE 809.32, STATS., and ***Anders v. California,*** 386 U.S. 738 (1967). Hawkins received a copy of the report, and he was advised of his right to file a response. He has not done so. Based on our review of the no merit report and the record, we conclude that there are no arguable appellate issues. Therefore, we affirm the judgment of conviction.

The no merit report first addresses whether Hawkins's pleas were entered knowingly and voluntarily. The court explained the potential penalties associated with the three crimes. The court explained the elements of each crime to Hawkins, and he responded that he understood them. The court reviewed the various constitutional rights waived by the pleas, and Hawkins indicated he understood that he would be waiving those rights. The court explained the effect of an ***Alford*** plea and found that the record contained a sufficient factual basis for such a plea. *See* ***State v. Garcia,*** 192 Wis.2d 845, 859-60, 532 N.W.2d 111, 116-17 (1995). Hawkins assured the court that he had not been promised anything in return for his pleas and had not been threatened. Hawkins acknowledged that the statement he gave to the police about the crimes was voluntary. Hawkins told the court that he was satisfied with his attorney's representation, and the attorney advised the court that he believed Hawkins understood the proceedings. In sum, the plea colloquy between Hawkins and the trial court satisfies the requirements set forth in ***State v. Bangert,*** 131 Wis.2d 246, 267-72, 389 N.W.2d 12, 20-25 (1986), and § 971.08, STATS. A postconviction challenge to the validity of the Hawkins's pleas would lack arguable merit.

We also conclude that a challenge to Hawkins's sentence would lack arguable merit. 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.

[1] ***North Carolina v. Alford,*** 400 U.S. 25 (1970). "An ***Alford*** plea is a guilty plea in which the defendant pleads guilty while either maintaining his innocence or not admitting having committed the crime." ***State v. Garcia,*** 192 Wis.2d 845, 856, 532 N.W.2d 111, 115 (1995).

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.***

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 the protection of the public. ***State v. Harris,*** 119 Wis.2d 612, 623, 350 N.W.2d 633, 639 (1984). The weight to be given the various factors is within the trial court's discretion. ***Cunningham v. State,*** 76 Wis.2d 277, 282, 251 N.W.2d 65, 67-68 (1977).

The record shows that the court considered the appropriate factors. The court spoke at length about the gravity of the offense. These charges stem from the beating death of Bryan Bradley, a physically and mentally handicapped man. Bradley was robbed and beaten to death in his home by two juveniles, C.C. and T.A. Hawkins drove the juveniles to Bradley's house and later picked them up. Although Bradley was already badly beaten by the time Hawkins returned to the house, he admitted hitting Bradley, who was bound, gagged and laying on the floor. C.C. and T.A. were charged with and convicted of more serious crimes.

The court considered Hawkins's youth, the absence of a prior record and his limited mental abilities. The court noted that he received the "benefit of considerable discretion" in the State's initial charging decision, which considered Hawkins's noninvolvement in the initial beating. Nevertheless, the court said, Hawkins was involved in a "serious[,] ... stupid and senseless act."

The court considered the interests of the victim and his family and society's interests in punishment and deterrence. The fact that Hawkins received the maximum prison term for each count does not render the sentence excessive or "`so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances.'" ***State v. Dietzen,*** 164 Wis.2d 205, 213, 474 N.W.2d 753, 756 (Ct. App. 1991) (quoting ***State v. Sarabia,*** 118 Wis.2d 655, 673, 348 N.W.2d 527, 537 (1984). Because the court considered the appropriate sentencing factors, it did not erroneously exercise its discretion.

Upon an independent review of the record, this court finds no basis for reversing the judgment of conviction. Any further appellate proceedings would be without arguable merit within the meaning of ***Anders*** and RULE 809.32, STATS. Accordingly, the judgment of conviction is affirmed, and appellate counsel is relieved of any further representation of the defendant on this appeal.

By the Court.—Judgment affirmed.