COURT OF APPEALS
DECISION
DATED AND RELEASED

March 12, 1997

Nos. 96-2433-CR-NM
96-2434-CR-NM

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

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

ROBERT T. LANGSTON,

Defendant-Appellant.

APPEAL from judgments of the circuit court for Kenosha County: BARBARA A. KLUKA, Judge. *Affirmed.*

Before Snyder, P.J., Nettesheim and Anderson, JJ.

PER CURIAM. Counsel for Robert T. Langston has filed a no merit report and a supplemental report in reply to Langston's response.[1] Upon our independent review of the record as mandated by ***Anders v. California***, 386

[1] Upon the court's own motion, these appeals were consolidated.

U.S. 738 (1967), we conclude that there is no arguable merit to any issue that could be raised on appeal.

Langston was initially charged with two counts of sexual assault of a child, S.T., his girlfriend's daughter. The complaint alleged that Langston sexually assaulted the child several times each week from just after her ninth birthday until she turned twelve. Langston entered into an agreement with the State in which he waived his right to a preliminary hearing in return for the State's promise to charge no more than six counts of first-degree sexual assault in the information. The State then filed an information charging six counts of first-degree sexual assault and Langston was released on bail with the conditions that he have no contact with S.T. or her brother, not reside at their residence and not reside with any minor females. Langston violated the conditions of his release by residing with S.T. and another minor female, failing to provide the court with a notice of his change of address, and by committing battery to another person. He was charged with four counts of bail jumping.

Pursuant to a plea agreement, Langston agreed to enter no contest pleas to three counts of sexual assault and two counts of bail jumping. The remaining counts were dismissed and read in. The State agreed to make no specific recommendation at sentencing. The court accepted Langston's no contest pleas and sentenced him to consecutive terms totaling fifty-five years in prison to be followed by ten years probation.

The initial no merit report addresses the validity of the no contest pleas and the length of the sentence. We agree with counsel's analysis that the trial court followed all of the requirements for accepting a no contest plea set out in ***State v. Bangert***, 131 Wis.2d 246, 259-62, 389 N.W.2d 12, 20-21 (1986). There is also no basis for challenging the exercise of the trial court's sentencing discretion in light of the gravity of the offenses, Langston's character, and the need to protect the public. *See* ***State v. Glotz***, 122 Wis.2d 519, 524, 362 N.W.2d 179, 181 (Ct. App. 1984).

In his response to the no merit report, Langston alleges that he was in jail at the time some of the crimes were committed. As his counsel notes in the supplemental no merit report, Langston's alibis do not exclude his participation in the crimes to which he pled. The offenses were alleged to have occurred on or about July or September of each year between 1989 and 1991. Because time is not an element in a sexual assault case, the State would not have been required to prove the precise date of the sexual assaults charged. *See* ***State v. Fawcett***, 145 Wis.2d 244, 250, 426 N.W.2d 91, 94 (Ct. App. 1988). In addition, Langston was allowed Huber law privileges for child care purposes in 1989. An alibi for some of the offenses or evidence that casts doubt on the date of some of the offenses would not have provided a substantial defense. In light of the accusation in the criminal complaint that Langston sexually assaulted the child several times per week for several years, his trial counsel was not arguably ineffective for securing a plea agreement despite confusion over the precise dates of the offenses charged.

Langston also alleges that his stepson lied when he stated that he saw a sexual assault through a keyhole because there are no keyholes in the house of the type which a person could see through. Before accepting his pleas, the trial court reminded Langston of the rights he would waive by entering no contest pleas, including the rights to cross-examine witnesses and present a defense. Langston knew the type of keyholes in the house at the time he entered his pleas. The fact that he may have been able to impeach a corroborating witness to some of the sexual assaults does not constitute newly-discovered evidence or a manifest injustice sufficient to allow withdrawal of the no contest pleas. *See* ***State v. Krieger***, 163 Wis.2d 241, 255, 471 N.W.2d 599, 604 (Ct. App. 1991).

Langston also alleges that he had just gotten out of the hospital "for thoughts of suicide and drugs and depression" at the time he entered the pleas. The trial court specifically questioned Langston about his mental state at the time the pleas were accepted and the record provides no basis for challenging the pleas at this time.

Our independent review of the record discloses no other potential issues for review. Therefore, we relieve Attorney John Lubarsky of further representing Langston in these matters and affirm the judgments of conviction.

By the Court.—Judgments affirmed.