

**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. 96-2633-CR-NM

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

TIMOTHY A. WASHBURN,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for La Crosse County: RAMONA A. GONZALEZ, Judge. *Affirmed.*

ROGGENSACK, J.¹ Timothy Washburn appeals from a judgment convicting him of five misdemeanors.² Counsel for Washburn has filed a no

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

² Washburn was convicted of the following offenses: (1) operating after revocation, contrary to § 343.44(1), STATS.; (2) operating while intoxicated, contrary to § 346.63(1)(a), STATS.; (3) two counts of bail jumping, contrary to § 946.49(1)(a), STATS.; and (4) habitual traffic offender, contrary to § 351.08, STATS. As part of the plea agreement, a number of

merit report pursuant to § 809.32, STATS., and *Anders v. California*, 386 U.S. 738 (1967). Washburn received a copy of the report and has responded by letter. Upon consideration of the report, Washburn's letter and an independent review of the record, as mandated by *Anders*, this court concludes there is no arguable merit to any issue that could be raised on appeal. The judgment of conviction is affirmed.

BACKGROUND

All of the convictions here appealed arise from traffic incidents in La Crosse County. Washburn pled guilty after being jailed for failing to appear for trial, which had been delayed repeatedly. Most of the delays were at Washburn's request, due to family illnesses and a continuum of attorneys. After accepting Washburn's pleas, the court revoked his driver's license for three years; ordered him to pay fines in excess of \$2,800; and sentenced him to 200 days in jail, with Huber privileges, and three years of probation.

DISCUSSION

Scope of Review.

When an appeal has been filed and a no merit report submitted by defendant's counsel, this court examines the report and any response from the defendant and conducts an independent review of the record to determine whether there are any issues which have arguable merit. *Anders*, 386 U.S. at 744.

Speedy Trial.

The no merit report and Washburn's letter both address only Washburn's constitutional right to a speedy trial, so our examination begins

(..continued)
related charges were dismissed.

there. A plea of guilty, when voluntarily and understandingly made, constitutes a waiver of non-jurisdictional defects and defenses, including allegations of some types of constitutional violations which occurred prior to the plea. *Mack v. State*, 93 Wis.2d 287, 293, 286 N.W.2d 563, 566 (1980). A defendant cannot challenge a judgment of conviction on the ground of denial of a speedy trial, either by appeal or by the application for a postconviction relief pursuant to § 974.06, STATS., after the court has accepted the defendant's guilty plea. *Foster v. State*, 70 Wis.2d 12, 19, 233 N.W.2d 411, 414 (1975). Here, Washburn attempts to do exactly what *Foster* specifically prohibits: he attempts to challenge his conviction entered after a plea of guilty. His plea waived any defect or defense based upon an allegation that the State violated his constitutional right to a speedy trial. Further consideration of this issue on appeal is without merit.

Appellant's Plea.

It is possible to argue that Washburn's plea was not knowingly, intelligently and voluntarily given, if he did not fully understand that he was waiving his right to challenge his conviction based on the denial of a speedy trial. Before a plea of guilty can be accepted, the trial court must determine: (1) the extent of the accused's education and general ability to comprehend; (2) the accused's understanding of the nature of the crimes charged and the potential punishments the court could impose; (3) the accused's understanding of the constitutional rights he is waiving; (4) whether either promises or threats were made to the accused to obtain his plea; and (5) whether a factual basis existed to support convictions of the crimes charged. *State v. Bangert*, 131 Wis.2d 246, 266-72, 389 N.W.2d 12, 22-25 (1986). A proper inquiry by the trial court ensures that defendants enter their pleas knowingly, intelligently and voluntarily. *Id.* This court reviews the record *de novo* to determine whether the procedure used by the trial court in accepting the plea was sufficient. *Id.* at 286, 389 N.W.2d at 31.

Washburn entered his pleas after negotiations with the State. Washburn agreed to plead guilty to five counts in exchange for dismissal of the remaining counts in five separate cases. The trial court reviewed Washburn's written plea agreement and questioned Washburn in regard to his education and general understanding. The court told him his plea would be waiving constitutional rights.

The plea colloquy was quite extensive. The court reviewed the five cases individually with Washburn, questioning him in regard to each charge within each case to assure he understood the charges and to determine that there were sufficient facts to support convictions on those charges to which pleas of guilty were to be entered. The trial court also meticulously explained the maximum sentences which it was free to impose on each charge. And, because the trial court dealt with the cases *seriatim*, the sentences were meted out *seriatim*, as well. At no time during this long and somewhat repetitive process did Washburn indicate that his pleas were not being given in a knowing, intelligent and voluntary fashion. At one point in the plea hearing, Washburn suggested there was yet another charge outstanding that the court did not have before it and he asked if it were possible to resolve that charge as a read-in, under the umbrella of the sentences which were being meted out for those charges to which guilty pleas had been entered. His request was granted. Washburn was not inexperienced in the courtroom process.

The plea colloquy between Washburn and the trial court satisfies all requirements which *Bangert* mandates; therefore, any postconviction challenge to the validity of his pleas would lack arguable merit and deserves no further consideration on appeal.

CONCLUSION

Based on our independent review of the record, as well as a thorough review of the no merit report and Washburn's letter to the court, we find no basis for reversing the judgment of conviction. Any further appellate proceedings would be without arguable merit within the meaning of *Anders* and § 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.