

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

JUNE 10, 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.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-3126-CR-NM

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

TIMOTHY W. BARNES,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Brown County:
VIVI L. DILWEG, Judge. *Affirmed.*

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

PER CURIAM. Counsel for Timothy W. Barnes has filed a no merit report pursuant to RULE 809.32, STATS. Barnes was advised of his right to respond to the report and has elected not to respond. 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.

A jury convicted Barnes of attempted first-degree intentional homicide, escape from custody, bail-jumping, battery to a police officer, pointing a firearm at another, intentionally disarming a police officer and resisting an officer. These convictions created a potential sentence of fifty-eight and one-half years in prison and a \$60,000 fine. The court sentenced Barnes to fifteen years in prison followed by five years' probation.

The no merit report addresses the sufficiency of the evidence and whether the trial court properly exercised its sentencing discretion. We concur with counsel's analysis of these issues. The testimony of Officers Biller and Wickman, corroborated by the testimony of other witnesses, establishes all of the elements of all of the crimes charged. While the officers' testimony differed in some respects, it is the jury's function to reconcile inconsistencies in the evidence and determine the credibility of witnesses. *See State v. Toy*, 125 Wis.2d 216, 222, 371 N.W.2d 386, 388 (Ct. App. 1985). Biller testified that he attempted to apprehend Barnes after the dispatcher informed him that Barnes had escaped from custody. Biller chased Barnes and apprehended him after Barnes tripped and fell. Barnes struck Biller on the left side of his head three times. In the ensuing struggle, Barnes gained possession of Biller's firearm. Wickman arrived on the scene and heard Barnes threaten to kill Biller while pointing the gun at Biller. Barnes later told another inmate in the county jail that he tried to pull the trigger but could not find the safety. This evidence, if believed by the jury, is sufficient to support the guilty verdicts. *See State v. Poellinger*, 153 Wis.2d 493, 501, 451 N.W.2d 752, 755 (1990).

The fifteen-year prison sentence followed by five years' probation is not so excessive or disproportionate to the crimes as to shock public sentiment. *See State v. Wickstrom*, 118 Wis.2d 339, 355, 348 N.W.2d 183, 191 (Ct. App. 1984). The trial court specifically considered the gravity of the offenses, Barnes' rehabilitative needs, his education and employment record and the need to deter others from criminal activity. These are appropriate factors for the trial court to consider. *See State v. Tew*, 54 Wis.2d 361, 367, 195 N.W.2d 615, 619 (1972).

Our independent review of the record discloses no other potential issues for appeal. Therefore, we relieve Attorney Leonard Kachinsky of further representing Barnes in this matter and affirm the judgment of conviction.

By the Court.—Judgment affirmed.

