

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

NOTICE

June 26, 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.

No. 97-0241-CR-NM

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DAVID L. VINEY,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Rock County:
RICHARD T. WERNER, Judge. *Affirmed.*

EICH, C.J.¹ David L. Viney appeals from a judgment of conviction resulting from no contest pleas to operating a motor vehicle while intoxicated (OWI) (sixth offense) and with a prohibited blood-alcohol content and operating after revocation (OAR) (fourth offense), contrary to §§ 346.63(1)(b), 346.63(1)(a), and

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

343.44(1), STATS. Other charges were dismissed pursuant to a plea agreement. Glenn L. Cushing, assistant state public defender, was appointed to represent Viney on appeal. Attorney Cushing has filed a no merit report with this court, pursuant to *Anders v. California*, 386 U.S. 738 (1967), and RULE 809.32, STATS., and reports that a copy has been sent to Viney. In compliance with *Anders*, both Attorney Cushing and this court informed Viney that he could respond to the report, and he has done so. After an independent review of the record as mandated by *Anders*, we conclude that any further proceedings in this matter would be wholly frivolous and without arguable merit.

Viney pled no contest after his driving record and blood-alcohol test results were entered into the record. The trial court sentenced him to a one-year jail term for the OWI conviction and ninety days concurrent for the OAR conviction. The court specifically rejected Huber privileges, finding that Viney had a history of missing court appearances. The factors the court considered in determining the sentencing period included Viney's long history of driving offenses, as well as lengthy history of other crimes.

The no merit report addresses whether Viney made the plea knowingly, intelligently and voluntarily, and whether the trial court erroneously exercised its discretion in sentencing. We agree with counsel that there is no merit to any argument based on these issues. Our independent review of the record reveals that it contains sufficient evidence to support the conviction, and that there are no other potential issues for appeal.

We specifically reject Viney's argument that the court abused its discretion in denying him Huber privileges. Viney argues that the record does not support the court's finding that he was not a good risk to appear in jail after daily

releases because he had demonstrated a failure to appear for court appearances. Although Viney contends that his various failures to appear in court result from miscommunication with trial counsel, our independent review of the record reveals that on at least one occasion, Viney appeared in open court, was personally told on the record that the case was continued for 1:30 p.m. that afternoon, yet Viney failed to reappear. On the record the next day, Viney confessed that he knowingly missed the continuance time and expected to be picked up on the warrant he knew would issue. We therefore reject Viney's argument that the circuit court misstated the record concerning Viney's failure to honor court appearance dates.

We conclude that any further appellate proceedings would be wholly frivolous and without arguable merit, within the meaning of *Anders*, as well as RULE 809.32, STATS. Accordingly, Viney's conviction is affirmed, and we grant Attorney Cushing's motion to withdraw from further representation before this court.

By the Court.—Judgment affirmed.

