COURT OF APPEALS
DECISION
DATED AND RELEASED

September 4, 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. 97-0889-CR-NM

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

ROBERT F. KARL,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Adams County: DUANE POLIVKA, Judge. *Affirmed.*

Before Vergeront, Roggensack and Deininger, JJ.

PER CURIAM. Appointed counsel for Robert F. Karl, Attorney Glenn L. Cushing, has filed a no merit report pursuant to RULE 809.32, STATS. Counsel provided Karl with a copy of the report, and he responded to it. Upon our independent review of the record as mandated by ***Anders v. California***, 386 U.S.

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

The criminal complaint charged Karl with arson, a violation of § 943.02(1)(a), STATS. It alleged that he started a fire at the Clearwater Resort as revenge for previous disputes with the management. Karl was bound over after the preliminary hearing, and an information was filed on one count of arson. The court denied several of Karl's pretrial motions. He ultimately pleaded no contest. The court imposed and stayed a prison sentence of twenty years, and placed Karl on probation for twenty years, with one year in jail as a condition of probation. The court also ordered him to pay restitution of more than $150,000.

The no merit report addresses whether Karl's plea was entered knowingly, voluntarily and intelligently. The supreme court established certain standards that a plea colloquy must meet with respect to the defendant's understanding of the nature of the charge, the potential punishment, and the rights being waived by the plea. ***State v. Bangert***, 131 Wis.2d 246, 389 N.W.2d 12 (1986). Whenever the procedure is not undertaken, and the defendant alleges that he did not know or understand the information that should have been provided at the plea hearing, the burden shifts to the state to show by clear and convincing evidence that the plea was entered knowingly, voluntarily and intelligently. ***Bangert***, 131 Wis.2d at 274, 389 N.W.2d at 26.

There would be no merit to arguing that Karl's plea failed to comply with the ***Bangert*** requirements. The trial court reviewed the rights Karl was giving up, asked whether he understood the proceedings and the plea agreement, described the elements of the crime charged, inquired whether Karl's attorney was

satisfied with Karl's understanding, and accepted the criminal complaint and preliminary hearing as factual support for the charge.

The no merit report also addresses whether the court erroneously exercised its discretion in sentencing Karl. We will not disturb a sentence imposed by the trial court unless the court erroneously exercised its discretion. ***State v. Thompson***, 172 Wis.2d 257, 263, 493 N.W.2d 729, 732 (Ct. App. 1992). A trial court erroneously exercises its discretion when it fails to state the relevant and material factors that influenced its decision, relies on immaterial factors, or gives too much weight to one sentencing factor in the face of other contravening considerations. ***Id.*** The weight given to each sentencing factor is left to the trial court's broad discretion. ***Id.*** When imposing sentence, a trial court must consider the gravity of the offense, the offender's character, and the public's need for protection. ***Id.*** at 264-65, 493 N.W.2d at 732-33.

There would be no merit to arguing that the court erred in sentencing Karl. The maximum possible sentence was forty years in prison. The court sentenced him to probation with one year in jail, and with a prison sentence of one-half the maximum imposed and stayed. In doing so, the court considered the life-threatening nature of the offense, the considerable damage to the property, Karl's history of alcohol problems, and whether the public would be protected by placing Karl on probation.

In his response to the no merit brief, Karl asserts that he was misled and mistreated by the trial court. He states that the only reason he pleaded no contest to the plea agreement was that he would be sentenced only to about ten years probation and any jail time already served. He states that the prosecutor and

the judge did not tell him that the judge disagreed with the recommendation, and had he known that the judge disagreed, he would have gone to trial.

Karl misstates the plea agreement. The agreement, as stated on the record at the plea hearing and agreed with by Karl at that time, was only that the State's recommendation would be for probation, rather than prison. The prosecutor specifically stated that there were "no other terms or conditions that are stipulated to." After Karl agreed that this was an accurate description of the agreement, the court asked him in three different ways whether he understood that the agreement was not binding on the court and that the court was free to sentence him to the maximum sentence. Karl answered in the affirmative each time. There is no arguable merit to an appeal from the sentence on this ground.

Our review of the record discloses no other potential issues for appeal.

By the Court.—Judgment affirmed.