COURT OF APPEALS
DECISION
DATED AND FILED

May 20, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 98-2970-CR-NM
98-2979-CR-NM

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

KEITH D. MCEVOY,

DEFENDANT-APPELLANT.

APPEAL from judgments of the circuit court for Jefferson County: ARNOLD K. SCHUMANN, Judge. *Affirmed.*

DYKMAN, P.J. Keith McEvoy appeals from his misdemeanor convictions for battery, attempted battery to a law enforcement officer, and fourth-offense intoxicated use of a vehicle. McEvoy kicked an officer who arrested him for drunk-driving. The trial court sentenced McEvoy to concurrent four-month jail terms on the battery and attempted battery charges, consecutive to any sentences McEvoy was then serving. The trial court sentenced McEvoy to a six-month jail

term on the drunk-driving charge, consecutive to the other two sentences. McEvoy's counsel has filed a no merit report under ***Anders v. California***, 386 U.S. 738 (1967). McEvoy has elected not to file a response. Counsel's no merit report raises two basic arguments: (1) the plea procedures were inadequate; and (2) the sentence was excessive. On review of the record, this court is satisfied that the no merit report properly analyzes the issues it raises and that the appeal has no arguable merit. Accordingly, this court adopts the no merit report, affirms the conviction, and discharges McEvoy's appellate counsel of his obligation to represent McEvoy further in this appeal.

This court first concludes that the plea procedures were adequate. Trial courts should not accept pleas unless they are intelligent and voluntary. *See* ***State v. Bangert***, 131 Wis.2d 246, 257, 389 N.W.2d 12, 19 (1986). Here, the trial court extensively questioned McEvoy about the consequences of his plea to ensure that it was being entered intelligently and voluntarily. The trial court ascertained McEvoy's knowledge of the proceedings, the elements of the crimes, and the range of punishments. The trial court also advised McEvoy of his constitutional rights and reviewed the factual basis for the plea. Beyond that, McEvoy signed a written plea questionnaire and waiver-of-rights form that further apprised him of his constitutional rights, such as the right to remain silent, to confront witnesses, to compel witnesses to testify, to have a jury trial with a unanimous verdict, and to require the prosecution to prove his guilt beyond a reasonable doubt. McEvoy acknowledged on that form his understanding of those rights and the voluntariness of his decision. In short, because McEvoy received a full appraisal of the consequences of his plea, we find no defects in the plea proceedings.

We also find nothing excessive in McEvoy's combined sentences. The trial court's sentence was discretionary, dependent on the gravity of the offense,

the character of the defendant, the public's need for protection, and the interests of deterrence. *See* ***State v. Sarabia***, 118 Wis.2d 655, 673-74, 348 N.W.2d 527, 537 (1984). McEvoy must show some unreasonable or unjustifiable basis in the record for the disputed sentence. *See* ***State v. Macemon***, 113 Wis.2d 662, 670, 335 N.W.2d 402, 407 (1983). The trial court's sentence deserves every presumption of validity. *See* ***State v. Setagord***, 211 Wis.2d 397, 418, 565 N.W.2d 506, 514 (1997). The trial court must simply give a sentence commensurate with the defendant's culpability, criminal record, overall dangerousness, and need for punishment. *See* ***State v. Curbello-Rodriguez***, 119 Wis.2d 414, 433, 351 N.W.2d 758, 767 (Ct. App. 1984). Appellate courts seldom interfere with the trial court's sentence, and defendants have a heavy burden to sustain against such sentences in the appellate courts of this state. *See* ***McCleary v. State***, 49 Wis.2d 263, 282, 182 N.W.2d 512, 522 (1971).

Here, the trial court accepted the parties' joint sentencing recommendation. Both parties believed that the combined sentences furnished a well-suited sanction for McEvoy's crimes. The trial court took note of McEvoy's chronic problem of driving while intoxicated, and its comments demonstrate a justifiable concern over the public danger this posed. The trial court sought to deter such wrongdoing and to issue a sentence that gave the public sufficient protection. The trial court also took note of McEvoy's disrespect and mistreatment of the arresting officer, including McEvoy's attempt to inflict physical harm. This court is satisfied that the trial court's sentence fit McEvoy's culpability, the severity of his crime, the public's need for protection, and the need to deter McEvoy and other like-minded wrongdoers from such crimes. McEvoy stood convicted of serious crimes, and his wrongdoing required a commensurate jail term. The trial court met its sentencing obligations in that regard and had a reasonable, discretionary basis to impose the combined four-month and six-month jail terms. In sum, this court sees

no misuse of trial court sentencing discretion. Accordingly, this court discharges counsel of his obligation to represent McEvoy further in this appeal.

By the Court.—Judgments affirmed.