

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

May 6, 1999

Marilyn L. Graves  
Clerk, Court of Appeals  
of Wisconsin

**NOTICE**

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

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.

**No. 98-3561-CR-NM**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**LAMART C. CAMMON,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Dane County:  
STEVEN D. EBERT, Judge. *Affirmed.*

Before Dykman, P.J., Eich and Deininger, JJ.

PER CURIAM. Lamart C. Cammon appeals from a judgment of conviction entered after he pled no contest to two counts of armed robbery, party to a crime. Cammon's appellate counsel, Attorney Joseph L. Sommers, has filed a no merit report pursuant to RULE 809.32, STATS., and *Anders v. California*, 386 U.S. 738 (1967). Cammon has filed a response. Based on our review of the no

merit report, Cammon's response, and the record, we conclude that further appellate proceedings would lack arguable merit. Therefore, we affirm the judgment of conviction.

On May 29, 1997, Cammon and two other men entered an apartment and demanded money from the occupants. Two members of the group were armed with a baseball bat and knife. The Information charged Cammon with two counts of armed robbery, party to a crime. Subsequently, the State filed an Amended Information that charged Cammon with an additional count of armed robbery, party to a crime; one count of attempted armed robbery, party to a crime; and one count of armed burglary, all arising from the same incident.

At the arraignment, Cammon's attorney moved to withdraw, citing Cammon's desire for a new attorney. After being advised that the state public defender would appoint new counsel, the court granted counsel's motion to withdraw.

A second attorney was appointed to represent Cammon. Shortly before a scheduled hearing, Cammon sent a letter to the trial court requesting that the attorney be dismissed because he was "not for my best interest." The trial court addressed the request at the outset of the hearing. Cammon told the court that he did not want to represent himself, that he felt he was "not being properly represented," and that he felt pressured "to plead to something that's not true." The court reassured Cammon that it was his decision whether to plead or not plead. The court also told Cammon that because the public defender would not appoint a third attorney for him,<sup>1</sup> he could either proceed with counsel or proceed

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<sup>1</sup> See WIS. ADM. CODE § PD 2.04.

*pro se* with the attorney acting as stand-by counsel. Cammon declined to represent himself and agreed to continue with counsel.

After a short recess, Cammon went forward with a proposed plea agreement. Consistent with the agreement, Cammon pled no contest to the original two counts of armed robbery, and the remaining three counts were dismissed and read in at sentencing. A presentence investigation was ordered, and the parties remained free to argue at sentencing.

Cammon was sentenced by a different judge because the judge who had accepted the plea was not available. At the outset of the sentencing hearing, the court inquired whether the parties objected to that procedure. Neither the State nor Cammon voiced any objection, and the matter proceeded. After hearing argument from both parties, the court sentenced Cammon to twenty years on each count, to run concurrently. Additional facts will be discussed below as necessary to address Cammon's response.

In the no merit report, appellate counsel addresses whether Cammon's no contest pleas were knowingly, voluntarily and intelligently made. Counsel concludes that a postconviction challenge to the plea would lack arguable merit. We agree. The court explained the elements of the crime and maximum penalty. The court explained the various constitutional rights that would be waived by the pleas, and Cammon indicated that he understood he was waiving each right. Cammon assured the court that no promises or threats had been made to induce his pleas, and that he was not under the influence of alcohol or drugs. The court determined that Cammon did not suffer from any mental disease. The court determined that a factual basis existed for each count.

The transcript of the plea hearing establishes that the plea was knowingly, voluntarily, and intelligently made. The colloquy between the court and Cammon satisfies the requirements set forth in *State v. Bangert*, 131 Wis.2d 246, 267-72, 389 N.W.2d 12, 20-24 (1986) and § 971.08, STATS. A postconviction challenge to the validity of Cammon's pleas would lack arguable merit.

In his response, Cammon asserts that his pleas were "coerced" by the filing of an Amended Information which charged Cammon with three additional crimes. Because the additional counts arose from the same incident, the State could charge Cammon with those crimes even though they were not alleged in the criminal complaint or testified to at the preliminary examination. See *State v. Burke*, 153 Wis.2d 445, 457, 451 N.W.2d 739, 744 (1990). We also note that Cammon assured the court during the plea hearing that he had not been threatened or coerced into entering his pleas.

Cammon also complains that the Amended Information was untimely filed, in violation of § 971.01(2), STATS.<sup>2</sup> Under that section, failure to timely file an information "shall entitle the defendant to have the action dismissed without prejudice." Again, no arguable appellate issue exists. First, the Information was timely filed. While the Amended Information was filed more than thirty days after the preliminary examination, such an amendment is not improper. In *Scott v. State*, 211 Wis. 548, 248 N.W. 473 (1933), an Information alleging arson of a building was amended before trial to add charges arising from the burning of personal property inside the building. The court held that the

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<sup>2</sup> Section 971.01(2), STATS., requires that an information be filed within thirty days after the completion of the preliminary examination.

amendment was proper because arson to a building “so naturally suggested the burning of the contents” that the defendant “was put to no disadvantage by the adding of a count charging burning of the personal property.” *Id.* at 552, 248 N.W. at 474. This case is similar. The charges added by the Amended Information involved additional residents of the apartment whose property was taken, or attempted to be taken, by the robbers. We can discern “no disadvantage” to Cammon arising from the filing of the Amended Information.<sup>3</sup>

Appellate counsel also discusses whether the court properly exercised its sentencing discretion, and most of Cammon’s response addresses that question. Both counsel and Cammon discuss whether comments made by the assistant district attorney in her sentencing recommendation constitute arguable error. We agree with counsel that no arguably meritorious issue exists.

When discussing Cammon’s “character,” the assistant district attorney told the court that, “as indicated in the presentence,” Cammon was “involved in the drug trade.” The prosecutor also said that Cammon was “the person who made the introduction between Jonathan Franklin and Mark Oliver that led to the death of Jonathan Daniel.” Cammon argues that those comments were unsubstantiated, false, and that they show that “the prosecutor was biased and trying to use any available information whether true or not to further enhance the defendant’s sentence and prejudice the judge.” Cammon also argues that the reference to Jonathan Daniel “should never have been presented” because he was not charged with any crime related to Daniel’s death. Cammon also faults his trial counsel for not objecting to the prosecutor’s comments.

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<sup>3</sup> For this reason, Cammon’s challenge to the effectiveness of counsel for not objecting to the filing of the Amended Information fails.

Cammon correctly notes that he has a due process right to be sentenced on the basis of correct information. *See State v. Johnson*, 158 Wis.2d 458, 470, 463 N.W.2d 352, 358 (Ct. App. 1990). However, the court does not misuse its sentencing discretion if it relies on allegedly erroneous facts in a presentence report which the defendant did not correct when given the opportunity. *See id.* In this case, Cammon disagreed only with the report's description of him as the leader of the three perpetrators of the underlying robbery. He did not voice any objection to the report's description of him as an "in-between guy ... introducing people looking for drugs to drug dealers." Therefore, Cammon cannot now successfully challenge the prosecutor's reference to that part of the report.<sup>4</sup>

The reference to the Daniel's homicide also was not error. In his response, Cammon concedes that a detective's report contains a "factual basis" for the assertion, but that the information was "irrelevant." Public policy demands that a sentencing court "acquire full knowledge of the character and behavior pattern of the convicted defendant before imposing sentence." *State v. Guzman*, 166 Wis.2d 577, 592, 480 N.W.2d 446, 450 (1992), *quoting Elias v. State*, 93 Wis.2d 278, 285, 286 N.W.2d 559, 562 (1980). A court may consider unproven or uncharged offenses. *See State v. McQuay*, 154 Wis.2d 116, 126, 452 N.W.2d 377, 381 (1990); *Johnson*, 158 Wis.2d at 469, 463 N.W.2d at 357. Because the sentencing court could consider Cammon's association, however indirect, with Daniel's killers, the prosecutor's reference to that information was not error.

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<sup>4</sup> Cammon does not suggest that he asked his trial counsel to correct the information and that counsel refused to do so.

Lastly, Cammon asserts that the sentencing judge had a conflict of interest because he had presided over the Daniel matter. When asked, Cammon did not object to the change in judge for sentencing purposes. He cannot now complain.

Based on an independent review of the record, this court finds no basis for reversing the judgment of conviction. Any further appellate proceedings would be without arguable merit within the meaning of *Anders* and RULE 809.32, STATS. Accordingly, the judgment of conviction is affirmed, and appellate counsel is relieved of any further representation of Cammon on this appeal.

*By the Court.*—Judgment affirmed.

