

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

September 27, 1995

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. 94-3315-CR-NM

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

PATRICK A. HAYDEN,

Defendant-Appellant.

APPEAL from a judgment and an order of the circuit court for Fond du Lac County: STEVEN W. WEINKE, Judge. *Affirmed.*

BROWN, J. Patrick A. Hayden appeals from a judgment of conviction and an order denying his postconviction motion to withdraw his plea. Hayden's appellate counsel, Attorney Patrick A. Hall, has filed a no merit report pursuant to RULE 809.32, STATS., and *Anders v. California*, 386 U.S. 738 (1967). Hayden has not filed a response.¹ As required by *Anders*, this court has independently reviewed the record. We conclude that an appeal would lack

¹ In a series of three orders, this court rejected Hayden's attempt to file a 100-page response. In the third order, issued on August 3, 1995, this court ordered that the no merit report would be addressed without a response from Hayden. Hayden moves for reconsideration of that order. The motion is denied.

arguable merit. Therefore, we affirm the judgment of conviction and the postconviction order.

On December 28, 1991, Hayden was involved in a fight with Nicholas Schwind. Hayden was charged with misdemeanor battery and felony bail jumping. Prior to trial, a plea agreement was reached. Under that agreement, the State agreed to dismiss the bail jumping charge and reduce the battery charge to disorderly conduct, to which Hayden would plead. The parties would jointly request that Hayden be placed on probation for one year, to run concurrent with another probation term. The State agreed not to oppose Hayden's request to reduce his sentence in another matter and restitution would be determined at a later date. Hayden entered a no contest plea, and the court sentenced Hayden consistent with the plea agreement.

In the no merit report, counsel discusses whether a continued challenge to Hayden's no contest plea would be frivolous. After reviewing the plea colloquy, we agree with counsel's conclusion that Hayden entered his plea knowingly, voluntarily and intelligently, and that the trial court properly denied Hayden's postconviction motion to withdraw his plea.

Section 971.08(1)(a), STATS., mandates that when accepting a plea, a trial court must address the defendant personally to determine that the plea is made voluntarily with an understanding of the nature of the charges and the potential punishment if convicted. The transcript of the plea hearing establishes that the trial court complied with the procedures set forth in § 971.08 and *State v. Bangert*, 131 Wis.2d 246, 389 N.W.2d 12 (1986). The terms of the negotiated plea agreement were discussed, and the court reminded Hayden that it was not bound to accept the parties' recommended disposition. The court explained the elements of the crime and the potential penalties. The court reviewed the plea questionnaire that Hayden had completed. Hayden indicated that he understood the various constitutional rights that he was waiving by his plea. A completed plea questionnaire is competent evidence that the plea was entered voluntarily, knowingly and intelligently. See *State v. Moerderdorfer*, 141 Wis.2d 823, 827-28, 416 N.W.2d 627, 629-30 (Ct. App. 1987). The record shows that Hayden knowingly, voluntarily and intelligently pleaded no contest, and an argument that Hayden's plea was entered in violation of his constitutional or statutory rights would be frivolous.

At the postconviction hearing, Hayden raised two points. First, he insisted that he had acted in self-defense. However, Hayden's motivation became irrelevant when he entered his no contest plea, especially in light of the reduction of the charge from battery to disorderly conduct.

Second, Hayden asserted that the State had reneged on part of the plea agreement because his sentence from another court was not reduced. The record shows that the State did not oppose Hayden's request to reduce his sentence in an unrelated matter. The State did what it agreed to do. The State cannot be held responsible if the court rejected Hayden's request.

Based on an independent review of the record, this court finds no basis for reversing the judgment of conviction or the postconviction order. Any further appellate proceedings would be without arguable merit within the meaning of *Anders* and RULE 809.32, STATS. Accordingly, the judgment and the order are affirmed, and Hall is relieved of any further representation of Hayden in this matter.

By the Court. – Judgment and order affirmed.