COURT OF APPEALS
DECISION
DATED AND RELEASED

August 3, 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(1), STATS.

NOTICE

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

Nos. 95-0065-CR-NM
95-0066-CR-NM
95-0067-CR-NM
95-0068-CR-NM
95-0069-CR-NM
95-0127-CR-NM

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

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JAMES R. BOLSTAD,

Defendant-Appellant.

APPEAL from a judgment and an order of the circuit court for Monroe County: MICHAEL J. MC ALPINE, Judge. *Affirmed*.

Before Eich, C.J., Sundby and Vergeront, JJ.

PER CURIAM. Pursuant to a plea agreement, James R. Bolstad pleaded guilty to the following charges:

- Operating a vehicle without the owner's consent, contrary to § 943.23(3), STATS.;
- Removal of a vehicle identification plate, contrary to § 342.30(1), STATS.;
- Obstructing an officer, contrary to § 946.41(1), STATS.;
- Operating a motor vehicle while under the influence of alcohol (3 counts), contrary to § 346.63(1)(a), STATS.;
- Felony bail jumping (2 counts), contrary to § 946.49(1)(b), STATS.;
- Misdemeanor bail jumping, contrary to § 946.49(1)(a), STATS.

As part of the plea bargain, the State dismissed additional charges, including possession of stolen property, disorderly conduct, fourth-degree sexual assault, and attempted robbery as a party to the crime, with a repeater enhancement.

The trial court sentenced Bolstad to two years in prison for operating a vehicle without the owner's consent; a consecutive five-year sentence for removal of a vehicle identification plate; a consecutive nine-month sentence for obstructing an officer; a total of two years and six months in jail, to run consecutively to the other sentences, for the three OWI convictions; five years (stayed) on each count of felony bail jumping, with a total of ten years' probation after completion of the prison terms; and nine months in jail (stayed) on the misdemeanor bail jumping, with two years probation to run concurrently to the ten years' probation received on the felony bail jumping convictions. Bolstad moved the trial court for sentence modification, but the trial court denied the postconviction motion.

The state public defender appointed Attorney Judith L. Maves-Klatt to represent Bolstad on appeal. Attorney Maves-Klatt has filed a no merit report with this court pursuant to ***Anders v. California***, 386 U.S. 738 (1967), and RULE 809.32, STATS. Attorney Maves-Klatt provided Bolstad with a copy of the no merit report, and Bolstad has filed a response. Based upon our independent review of the record as required by ***Anders***, we conclude that there is no issue of arguable merit that Bolstad could raise on appeal. We therefore affirm the judgments of conviction, and the order denying postconviction relief.

The crimes to which Bolstad pleaded guilty occurred over several months. Police found him in possession of a 1990 Toyota pick-up truck. One of the vehicle identification plates had been removed, and a plate for a 1980 Toyota pickup truck registered to Bolstad was in its place. License plates registered to the 1980 pickup truck were on the 1990 truck.

One of the conditions of Bolstad's bond in relation to his various crimes was that he refrain from alcohol consumption. Police found Bolstad intoxicated numerous times while on bond, and Bolstad's drinking led to the bail-jumping charges. His alcohol consumption also led to the OWI charges.

The obstruction charge arose when police were looking for Bolstad's son, Randy, as part of a criminal investigation. When police went to Bolstad's home, he denied that Randy was with him. Police then discovered that Randy was in the home.

The no merit report does not address whether Bolstad entered his plea knowingly, intelligently, and voluntarily. Based on our independent review of the record, however, we are satisfied that the plea colloquy between Bolstad, his counsel, and the trial court was sufficient to meet the requirements of § 971.08, STATS., and ***State v. Bangert***, 131 Wis.2d 246, 267-72, 389 N.W.2d 12, 23-25 (1986). More specifically, the record shows that Bolstad completed a guilty-plea questionnaire and waiver-of-rights form that set forth, among other things, the constitutional rights he was relinquishing by pleading guilty. *See*

State v. Moederndorfer, 141 Wis.2d 823, 416 N.W.2d 627 (Ct. App. 1987) (guilty-plea questionnaire can serve as the basis of a court's determination that a plea is knowing and voluntary). The trial court also engaged in a lengthy personal colloquy with Bolstad regarding much of the same material covered by the plea questionnaire. In that colloquy, Bolstad affirmed, among other things, that he understood that he was waiving certain constitutional rights by pleading guilty,[1] that he was entering his plea freely and voluntarily, and that he understood that the trial court was free to impose the maximum sentences on the charges. There would be no arguable merit to an appeal challenging the voluntariness of Bolstad's pleas.

We are also satisfied that the trial court adduced an adequate factual basis to support the plea. *See* ***Christian v. State***, 54 Wis.2d 447, 457, 195 N.W.2d 470, 475-76 (1972) (trial court's inquiry must be sufficient to establish a factual basis for the plea). Here, the trial court used the criminal complaints to provide the factual basis for the pleas. There would be no arguable merit to an appeal challenging the validity of Bolstad's plea on this basis.

The no merit report addresses the question of whether the trial court properly exercised its discretion when it sentenced Bolstad, and whether the sentences imposed were harsh and unconscionable. Sentencing lies within the trial court's discretion, and our review is limited to whether the trial court misused its discretion. ***State v. Larsen***, 141 Wis.2d 412, 426, 415 N.W.2d 535, 541 (Ct. App. 1987). The primary factors for the sentencing court to consider are the gravity of the offense, the character of the offender, and the public's need for protection. ***Id***. at 427, 415 N.W.2d at 541.

The record shows that the trial court carefully considered all the relevant sentencing factors after hearing the arguments of counsel and a

[1] *See* ***State v. Hansen***, 168 Wis.2d 749, 756, 485 N.W.2d 74, 77 (Ct. App. 1992) (when guilty-plea questionnaire is submitted, trial court must nonetheless establish through personal colloquy with defendant that he or she is waiving the applicable constitutional rights).

statement from Bolstad. It considered Bolstad's prior criminal record, and noted that Bolstad had a history of criminal behavior and alcohol abuse. The trial court stated that it was imposing consecutive sentences on Bolstad for several reasons. It noted that, given Bolstad's persistent alcohol abuse and criminal behavior arising from that abuse, it believed it necessary to imprison Bolstad for a lengthy period of time in order to protect the public. It also indicated that it believed an extended time in prison would assist Bolstad in breaking his reliance on alcohol, and that Bolstad would receive the treatment he needed through prison treatment programs. Finally, it also pointed out that consecutive sentences were appropriate because each of the crimes committed by Bolstad were separate and distinct instances of criminal behavior.

Bolstad contends in his response to the no merit report that the sentences imposed were harsh and unconscionable. He also suggests that the prosecutor had a vendetta against him and "tr[i]ed every dirty trick she could to get me in prison."

We will find sentences within the permissible range set by statute to be harsh and excessive when they are so disproportionate to the offenses committed as to shock public sentiment and violate the judgment of reasonable people. *See* ***Ocanas v. State***, 70 Wis.2d 179, 185, 233 N.W.2d 457, 461 (1975). Our review of the record indicates that the prosecutor vigorously argued for lengthy prison terms for Bolstad based on his history of criminal behavior and alcohol abuse. Although the prosecutor was harsh in her comments about Bolstad, there is nothing in the record to indicate that they were motivated by anything other than Bolstad's own behavior and record.[2] We are satisfied that the trial court considered the appropriate sentencing factors, and imposed appropriate sentences under the circumstances. We cannot say that the

[2] We do note that the prosecutor mentioned an incident in which a person close to Bolstad was killed. The prosecutor appeared to suggest that Bolstad was somehow involved in the death of that person. There is nothing in the record to indicate that the trial court relied on that information from the prosecutor, or imposed sentence based on anything other than Bolstad's criminal history and the crimes to which he had pleaded.

sentences imposed shock public sentiment or violate the judgment of reasonable people.

Finally, the no merit report addresses whether the trial court erred when it denied Bolstad's postconviction motion. In that motion, Bolstad had requested sentence modification, arguing that he was ineligible for certain prison treatment programs due to the length of his sentence. He contended that his ineligibility for the treatment programs was a "new factor" warranting sentence modification, and asked the trial court to order that his sentences run concurrently.

"A new factor is a fact or set of facts highly relevant to the imposition of sentence, not known to the trial court at the time of original sentencing, either because it was not then in existence or because, even though it was then in existence, it was unknowingly overlooked by all of the parties." ***State v. Prince***, 147 Wis.2d 134, 136, 432 N.W.2d 646, 647 (Ct. App. 1988). We review *de novo* the trial court's determination as to whether the fact or set of facts satisfies that legal standard. ***Id***.

There is no possibility that Bolstad could succeed in pursuing this argument on appeal. The trial court denied the postconviction motion, reasoning that the lack of immediate treatment for Bolstad was not a new factor because it was aware at the time of sentencing that Bolstad might not receive immediate treatment. It also indicated that the lack of immediate treatment for Bolstad did not frustrate the original purpose of the sentence. The trial court noted that it had sentenced Bolstad to lengthy consecutive sentences for reasons other than to ensure that Bolstad received treatment. The trial court indicated that it ordered the consecutive sentences to protect the public. It also stated that to have imposed concurrent sentences would have unduly depreciated the seriousness of the offenses Bolstad had committed. We are satisfied that an appeal on this issue would be without arguable merit because the facts alleged by Bolstad do not meet the definition of a new factor.

Based on our independent review of the entire record, we are satisfied that there are no other issues of arguable merit that Bolstad could raise on appeal. Attorney Maves-Klatt is therefore relieved of further representation of Bolstad in this appeal.

By the Court.—Judgment and order affirmed.