

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

October 5, 1995

NOTICE

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.

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

No. 95-0462-CR-NM

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

STEVEN R. LINEBERRY,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for La Crosse County: DENNIS G. MONTABON, Judge. *Affirmed.*

VERGERONT, J.¹ Steven R. Lineberry appeals from a judgment convicting him of disorderly conduct as a repeater. Lineberry's appellate counsel has filed a no merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967). Lineberry has been provided a copy of the report and advised of his right to file a response. No response has been filed.

The no merit report identified two potential issues: (1) whether the State discriminated against Lineberry and prosecuted him in violation of his

¹ This appeal is decided by one judge pursuant to § 752.31(2)(f), STATS.

rights to equal protection and (2) whether there was sufficient evidence to support the jury's verdict beyond a reasonable doubt. Appellate counsel also noted Lineberry's complaint that he screamed because he was hurt by the officers and that his actions do not rise to the level of disorderly conduct. After an independent review of the record, we conclude that the issues identified by counsel lack arguable merit. Lineberry's sentence was within the bounds of the sentencing court's discretion and the record discloses no other potential issues of arguable merit. Accordingly, we affirm the conviction and grant appellate counsel's request to withdraw from further representation of Lineberry in this matter.

On July 12, 1994, a judgment of conviction was entered, sentence was withheld and Lineberry was placed on probation for one year with the condition to serve six months in jail with credit for six months previously served.² Lineberry appeals the July 12 judgment of conviction.

The record supports the jury's finding that beyond a reasonable doubt Lineberry was guilty of disorderly conduct. Section 947.01, STATS., defines disorderly conduct as conduct in a public or private place that is violent, abusive, unreasonably loud, profane, under circumstances that tend to provoke a disturbance.

The trial transcript discloses that on November 23, 1993, Dean Sorenson, a jailor at the La Crosse County jail, observed Lineberry approach Officer Timothy Malette, point his finger in the officer's face and swear and yell at him. Officer Malette said that he would take Lineberry to receiving and the two started down the hallway. Sorenson observed a scuffle between the two, and "Officer Malette had Mr. Lineberry by the arm, flailing, fighting to keep control. ... Officer Malette was kind of reeling backwards into the wall."

Lineberry was still yelling and screaming and Sorenson attempted to put a "full nelson" on him, but Lineberry dropped to the floor and pulled Sorenson down with him. They wrestled on the floor and with the assistance of

² On September 23, 1994, his probation was revoked and a sentence of three years concurrent with another conviction and nine months pre-incarceration credit was ordered.

two officers Sorenson obtained control and Lineberry was escorted to a receiving cell.

Officer Malette testified that when Lineberry approached him, he asked Lineberry to calm down, but Lineberry continued to holler. Malette attempted to escort Lineberry by placing one hand near the elbow and the other at his wrist. Lineberry was "very angry, out of control and struggling violently ... just whipped me back and forth"

An appellate court may not reverse a criminal conviction unless the evidence, viewed most favorably to the State and the conviction, is so insufficient in probative value that it can be said as a matter of law that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt. *State v. Poellinger*, 153 Wis.2d 493, 501, 451 N.W.2d 752, 755 (1990). Matters of weight and credibility are for the jury to determine. *State v. Alles*, 106 Wis.2d 368, 376, 316 N.W.2d 378, 382 (1982). Lineberry testified that he used profanity and a loud voice in speaking to Malette. The jury was not required to accept Lineberry's explanation that he was only responding to Malette's provocation.

Our review of the record discloses sufficient evidence to support the verdict beyond a reasonable doubt. The record discloses no basis for an appeal based upon an equal protection argument. The record reveals that the sentence was within the bounds of trial court discretion. The record discloses that Lineberry had five convictions in 1993 and that he could be sentenced as a repeater to not more than three years. Sections 947.01 and 939.62, STATS. The record reveals that the probationary period of one year with the condition to serve six months in jail demonstrates a reasonable exercise of sentencing discretion. See *State v. Horn*, 126 Wis.2d 447, 461, 377 N.W.2d 176, 182 (Ct. App. 1985), *aff'd*, 139 Wis.2d 473, 407 N.W.2d 854 (1987).

The record reveals no other potential issues of arguable merit. We conclude that any further appellate proceedings would be without arguable merit within the meaning of *Anders*. We therefore discharge Attorney Margarita Van Nuland of any further obligation to represent Lineberry in this matter.

By the Court. – Judgment affirmed.