**COURT OF APPEALS**
**DECISION**
**DATED AND RELEASED**

July 13, 1995



**No. 95-0477-CR-NM**

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

**STATE OF WISCONSIN,**

**Plaintiff-Respondent,**

**v.**

**DANIEL R. DAVIS,**

**Defendant-Appellant.**

APPEAL from a judgment of the circuit court for Dane County: DANIEL R. MOESER, Judge. *Affirmed*.

Before Gartzke, P.J., Sundby and Vergeront, JJ.

PER CURIAM. Daniel R. Davis appeals from the judgment of conviction entered on April 11, 1994, after Davis' probation was revoked. The underlying crimes were two counts of burglary and one count of misdemeanor theft. The court sentenced Davis to five years on each burglary count and to six months on the misdemeanor theft. The terms were to run concurrent to each other, and consecutive to another sentence.

Davis' appellate counsel, Attorney Robert T. Ruth, filed a no merit report under RULE 809.32, STATS., and ***Anders v. California,*** 386 U.S. 738 (1967). Davis has filed a response. As required by ***Anders,*** this court has independently reviewed the record. Because that review reveals no arguable appellate issues, we affirm the judgment of conviction.

In the no merit report, counsel addresses whether Davis' no contest plea was knowingly, voluntarily, and intelligently entered. We do not reach this issue. Davis entered his plea on October 1, 1985. The court withheld sentence and placed Davis on probation for three years on each count. The probation terms were to run concurrent to each other, and consecutive to a prison sentence Davis was then serving.

Davis did not appeal the October 1, 1985 judgment of conviction. Any challenge to the validity of Davis' no contest plea should have been raised in a direct appeal from that judgment. *See* ***State v. Drake,*** 184 Wis.2d 396, 399, 515 N.W.2d 923, 924 (Ct. App. 1994). The time for challenging the validity of the plea has long since passed. Davis cannot seek withdrawal of his no contest plea by appealing the judgment of conviction entered after revocation. ***Id.*** Therefore, an appeal on that basis would lack arguable merit.

Counsel also discusses whether the court erroneously exercised its sentencing discretion. In imposing sentence, the court noted that Davis had been revoked from probation or parole four times since the underlying crimes were committed in 1985.[1] The court indicated that Davis "ha[d] received chances" but that Davis "kep[t] committing crimes and ... breaking the rules." The court noted that the incident which led to the revocation involved violence and weapons. The court was "not willing to take any more risks or any more gambles with someone that has your history."

Sentencing lies within the sound discretion of the trial court, and a strong policy exists against appellate interference with that discretion. *See* ***State***

[1] Because the court in 1985 ordered that Davis' probation be served consecutive to another prison sentence, Davis did not begin serving his probation on these offenses until the completion of that other sentence. The earlier revocations ran to the other sentence and did not affect this case.

***v. Haskins,*** 139 Wis.2d 257, 268, 407 N.W.2d 309, 314 (Ct. App. 1987). The trial court is presumed to have acted reasonably and the defendant has the burden to show unreasonableness from the record. *See* ***id.***

The primary factors to be considered by the trial court in sentencing are the gravity of the offense, the character of the offender, and the need for the protection of the public. ***State v. Harris,*** 119 Wis.2d 612, 623, 350 N.W.2d 633, 639 (1984). The weight to be given the various factors is within the trial court's discretion. ***Cunningham v. State,*** 76 Wis.2d 277, 282, 251 N.W.2d 65, 67-68 (1977).

The sentencing transcript shows that Davis' character and the need to protect the public from further criminal conduct were foremost in the court's mind. Those are proper and relevant factors. The court properly exercised its discretion in sentencing Davis.

Davis raises three points in his response. First, and most extensively, Davis asks this court to review the revocation proceedings. We cannot do so. Revocation proceedings stand independent from the underlying criminal case. ***State ex rel. Flowers v. DHSS,*** 81 Wis.2d 376, 384, 260 N.W.2d 727, 732 (1978). Judicial review of a revocation order can be obtained by certiorari to the court of conviction. ***State ex rel. Johnson v. Cady,*** 50 Wis.2d 540, 550, 185 N.W.2d 306, 311 (1971). The revocation decision is not reviewable in the context of this appeal, and we do not address the merits of that question.

Second, Davis believes that he should be given sentence credit "coming from the time of being charged [1985] to ultimately being sentenced [1994]." During that period, Davis was incarcerated on unrelated crimes. Therefore, Davis is not entitled to sentence credit. *See* ***State v. Amos***, 153 Wis.2d 257, 280-81, 450 N.W.2d 503, 512 (Ct. App. 1989).

Lastly, Davis asserts that he should have been "tried under the old law, instead of the new case law." Davis does not expand on this argument, and we decline to speculate on what "law" he is referring to.

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 Attorney Robert T. Ruth is relieved of any further representation of Davis on this appeal.

*By the Court.*—Judgment affirmed.