

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

August 31, 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. 95-0491-CR-NM

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

MICHAEL J. BURGUS,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Crawford County: GEORGE S. CURRY, Judge. *Affirmed.*

Before Eich, C.J., Gartzke, P.J., and Dykman, J.

PER CURIAM. Michael J. Burgus appeals from a judgment convicting him of two counts of the delivery of a controlled substance, tetrahydrocannabinol, as a party to the crime, contrary to §§ 161.41 (1)(h) and 939.05, STATS. The trial court withheld sentence and placed Burgus on probation for three years with the conditions that he serve a seven-month jail term and meet certain educational and employment goals.

Burgus's appellate counsel, Attorney Russell L. Hanson, has filed a no merit report pursuant to RULE 809.32, STATS., and *Anders v. California*, 386 U.S. 738 (1967). A copy of the no merit report was served upon Burgus, who elected not to file a response. Upon consideration of the report and after an independent review of the record, this court concludes that there is no arguable merit to any issue that could be raised on appeal. We therefore summarily affirm the judgment of conviction pursuant to RULE 809.21, STATS.

The no merit report identifies one potential issue: whether the trial court erred in refusing to permit Burgus's appointed trial counsel to withdraw. Burgus's trial counsel, Attorney Sheila Kelley, was appointed by the state public defender to represent Burgus in this matter on February 1, 1994. On May 26, 1994, the trial court scheduled trial to commence on August 25, 1994, although the date for trial was later moved up to August 11, 1994. Nine days before trial was scheduled to commence, Attorney Kelley moved the court to withdraw. The trial court denied the motion.

The determination to relieve appointed counsel and permit the substitution of another attorney lies within the trial court's discretion. *C.N. v. Waukesha County Community Human Servs. Dep't*, 143 Wis.2d 603, 615, 422 N.W.2d 450, 455 (Ct. App. 1988). A discretionary determination will be sustained where the record reflects the trial court's "reasoned application of the appropriate legal standard to the relevant facts in the case." *Hedtcke v. Sentry Ins. Co.*, 109 Wis.2d 461, 471, 326 N.W.2d 727, 732 (1982). The determination of whether to allow the substitution of counsel turns on the movant's showing of good cause. *C.N.* at 615, 422 N.W.2d at 455. As a general matter, "eleventh-hour" requests are frowned upon, although good cause may warrant substitution regardless." *Id.* (citation omitted). Among the concerns that govern a trial court's discretionary determination are the orderly procedures of the administration of justice, the amount of preparatory work already accomplished and the avoidance of delay or dilatory tactics. *Id.* at 615-16, 422 N.W.2d at 455.

As grounds for the motion, Attorney Kelley advised the trial court that Burgus no longer wished to be represented by her and that the state public defender had concluded that Burgus no longer qualified for representation at public expense. The trial court rejected the motion, citing its eleventh-hour character, the absence of any affidavit or other evidence in support of the

motion to relieve defense counsel, the absence of any evidence that defense counsel had done anything improper or had a conflict of interest, the readiness of both the prosecution and defense counsel to try the case as scheduled and the unconditional retainer filed by Attorney Kelley in the case at its outset.

The record demonstrates that the trial court carefully evaluated the relevant facts and law, including giving weight to Burgus's desire for a private attorney of his own choosing. The trial court then utilized a rational process to reach a reasonable conclusion. Accordingly, this court concludes that an appellate challenge to the trial court's denial of the motion to relieve Attorney Kelley and to permit the substitution of counsel would lack arguable merit.

In addition to the issue discussed by counsel in the no merit report, we have independently considered an additional question: whether Burgus's plea was voluntarily and intelligently made. We have reviewed the plea colloquy between Burgus and the trial court and conclude that the requirements of § 971.08, STATS., and *State v. Bangert*, 131 Wis.2d 246, 267-72, 389 N.W.2d 12, 23-25 (1986), were met. The court questioned Burgus at length about his proposed no contest plea, see *North Carolina v. Alford*, 400 U.S. 25, 31 (1970), and the various constitutional rights that Burgus would waive by the plea. Burgus indicated that he understood his rights and that his no contest plea would waive those rights. The court discussed the elements of the charges and the facts underlying them. The record contains a guilty plea questionnaire which Burgus acknowledged signing. See *State v. Moederndorfer*, 141 Wis.2d 823, 827-28, 416 N.W.2d 627, 629-30 (Ct. App. 1987). We conclude, therefore, that an appellate challenge to the validity of the no contest plea would lack arguable merit.

On the basis of the record before us, we conclude that any further appellate proceedings on behalf of Burgus would be frivolous within the meaning of *Anders* and RULE 809.32, STATS. Accordingly, we affirm the judgment of conviction. Attorney Hanson is relieved of any further representation of Burgus in this appeal.

By the Court. — Judgment affirmed.