

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

May 23, 1996

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.

**No. 95-2183-CR-NM**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

**STATE OF WISCONSIN,**

**Plaintiff-Respondent,**

**v.**

**GREGORY J. LIBKE,**

**Defendant-Appellant.**

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

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

PER CURIAM. Counsel for Gregory Libke has filed a no merit report pursuant to RULE 809.32, STATS. Libke was advised of his right to respond to the report and has elected not to respond. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude that there is no arguable merit to any issue that could be raised on appeal.

Libke pled guilty to possession of marijuana with intent to deliver. The court withheld acceptance of the plea and placed Libke in a diversion program. Libke violated the terms of the diversion agreement by allegedly committing an armed robbery.<sup>1</sup> The court then revoked the diversion agreement, accepted his guilty plea and sentenced Libke to two years probation consecutive to the fifteen-year prison sentence he received in the armed robbery case.

The no merit report does not address any specific issue. Nonetheless, we have independently reviewed the record and conclude that there is no potential issue for appeal.

The trial court followed the appropriate procedures for taking the guilty plea. See *State v. Bangert*, 131 Wis.2d 246, 261-62, 389 N.W.2d 12, 21 (1986). The court explained the elements of the offense, reminded Libke of the constitutional rights he waived by pleading guilty, and determined that the plea was knowingly, intelligently and voluntarily entered. The record discloses no basis for challenging the plea.

There is also no basis for challenging Libke's sentence. He was sentenced to two-years probation consecutive to the prison term imposed for the armed robbery. The maximum sentence allowable was three years in prison and a \$25,000 fine. The presentence report submitted at the time of the diversion agreement recommended probation with ninety days in jail based on Libke's attitude about this offense. The trial court concluded that a probationary term consecutive to the prison sentence would give the State greater control over Libke, particularly in light of his drug and alcohol abuse problems. The sentence constitutes a reasonable exercise of the trial court's sentencing discretion.

Our independent review of the record discloses no other potential issues for review. Therefore, we relieve Attorney Russell Hanson of further representing Libke in this matter and affirm the judgment of conviction.

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<sup>1</sup> Libke has appealed the armed robbery conviction (Appeal No. 95-2184-CR).

*By the Court.*—Judgment affirmed.