

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

July 31, 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, 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. 95-3047-CR-NM**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

**STATE OF WISCONSIN,**

**Plaintiff-Respondent,**

**v.**

**CHRISTOPHER MALDONADO,**

**Defendant-Appellant.**

APPEAL from a judgment and an order of the circuit court for Milwaukee County: PATRICIA D. MCMAHON, Judge. *Affirmed.*

Before Sullivan, Fine and Schudson, JJ.

PER CURIAM. Christopher Maldonado appeals from a judgment convicting him of burglary and an order denying his postconviction motion to modify the conditions of his probation. The State Public Defender appointed Attorney Charles J. Stansberry as Maldonado's appellate counsel. Attorney Stansberry served and filed a no merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967) and RULE 809.32(1), STATS. Maldonado filed a response.

After an independent review of the record as mandated by *Anders*, we conclude that any further appellate proceedings would lack arguable merit.

A jury found Maldonado guilty of burglary, as a party to the crime, contrary to §§ 943.10(1)(a) and 939.05, STATS. The trial court imposed and stayed a four-year sentence and ordered a four-year term of probation.

The no merit report addresses whether: (1) the State's principal witness was credible; (2) there was sufficient evidence to convict Maldonado; and (3) the trial court erroneously exercised its sentencing discretion. We agree with counsel's description, analysis and conclusion that pursuing these appellate issues would lack arguable merit.

Maldonado maintains his innocence and raises three issues in response: (1) the credibility of the accomplice; (2) the sufficiency of the evidence; and (3) whether he received ineffective assistance of trial counsel.

The first two issues involve the sufficiency of the evidence. Maldonado claims that the jury could not properly find him guilty when the only evidence implicating him was from an accomplice whose testimony was patently incredible. We disagree. Upon a challenge to the sufficiency of evidence to support a jury finding of guilt, this court may not substitute its judgment for that of the jury unless the evidence, viewed most favorably to the State and the conviction, is so lacking in probative value and force that no reasonable jury could have found guilt beyond a reasonable doubt. *State v. Poellinger*, 153 Wis.2d 493, 507, 451 N.W.2d 752, 757-58 (1990). This court will uphold the verdict if any possibility exists that the jury could have drawn the inference of guilt from the evidence. See *id.* at 507, 451 N.W.2d at 758.

Maldonado claims that his accomplice implicated him to obtain a favorable sentencing recommendation. However, during cross-examination, trial counsel emphasized that the accomplice was a convicted felon and hoped to receive special consideration for testifying against Maldonado. Trial counsel also cross-examined the accomplice on the contradictions between his testimony and his previous admissions to the police. Consequently, the jury was aware of the accomplice's questionable credibility. Furthermore, questions of a witness's

credibility are determined by the fact finder and this court will not disturb that determination if more than one reasonable inference can be drawn from the credible evidence. *See, e.g., In re the Estate of Dejmal*, 95 Wis.2d 141, 151, 289 N.W.2d 813, 818 (1980) (the fact finder is in a superior position to the reviewing court "to observe the demeanor of witnesses and to gauge the persuasiveness of their testimony"). *Id.* at 152, 289 N.W.2d at 818 (citation omitted). *See also Poellinger*, 153 Wis.2d at 506-07, 451 N.W.2d at 757.

The jury was presented with conflicting versions of the incident. The jury believed the State's version, which supports the finding of guilt. We agree with appellate counsel's description, conclusion and analysis that challenging the sufficiency of the evidence would lack arguable merit.

Maldonado emphasizes that several jurors were victims of similar crimes and were predisposed to finding him guilty. The trial court extensively questioned the prospective jurors on their experiences as victims of similar crimes. Each was questioned individually and those who ultimately served as jurors responded that their experiences would not interfere with their responsibilities to evaluate the evidence fairly. Trial counsel pursued that line of questioning with one prospective juror, who was a burglary victim, and mentioned another prospective juror's remarks about a similar experience when addressing the panel. Neither of the latter two panel members served as jurors.

This challenge is reviewable as an ineffective assistance of counsel claim. However, "it is a prerequisite to a claim of ineffective representation on appeal to preserve the testimony of trial counsel." *State v. Machner*, 92 Wis.2d 797, 804, 285 N.W.2d 905, 908 (Ct. App. 1979). It is inappropriate for this court to determine the competency of trial counsel on unsupported allegations. *State v. Simmons*, 57 Wis.2d 285, 297, 203 N.W.2d 887, 894-95 (1973). Because there is no evidentiary record on this issue, we cannot review Maldonado's implied claim of ineffective assistance of trial counsel.

We have addressed the issues Maldonado has raised. Upon our independent review of the record, as mandated by *Anders* and RULE 809.32(3), STATS., we conclude that there are no other meritorious issues and that any further appellate proceedings would lack arguable merit. Accordingly, we

affirm the judgment of conviction and relieve Attorney Charles J. Stansberry of any further appellate representation of Maldonado in this appeal.

*By the Court.* – Judgment and order affirmed.