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

July 18, 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. 95-3074-CR-NM**

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

**STATE OF WISCONSIN,**

**Plaintiff-Respondent,**

**v.**

**TOUCHIA YANG,**

**Defendant-Appellant.**

APPEAL from a judgment of the circuit court for Monroe County: MICHAEL J. McALPINE, Judge. *Affirmed*.

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

PER CURIAM. Counsel for Touchia Yang has filed a no merit report and a supplemental no merit report pursuant to RULE 809.32, STATS. Yang was advised of his right to respond to the reports 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.

Yang was convicted by a jury of attempted first-degree intentional homicide, attempted armed robbery and operating a vehicle without the owner's consent. Each of these crimes carried a penalty enhancer for their connection to gang activity. The court sentenced Yang to ten years in prison and a consecutive ten years' probation.

The no merit report and the supplemental no merit report address the sufficiency of the evidence, whether the court properly admitted Yang's statements into evidence, whether the court correctly ruled that the State's striking of the only Asian-American juror was for reasons other than race and whether the sentence constituted a proper exercise of discretion. We confirm counsel's analysis of these issues.

The complaint charged that Yang, along with other members of his gang, attempted to rob Bill's Gun Shop, using a stolen car for their getaway. The owner testified that two young men entered his store and one of them pulled out a gun and announced that it was a holdup. The store owner pulled out a revolver and one of the perpetrators fired a shot. The owner felt the heat of the muzzle blast on his face. He returned fire, striking one of the robbers.

The State also presented testimony of Yang's accomplices who testified to his involvement in these crimes. They indicated that the robbery had been previously planned and the possibility of murdering the owner was discussed. They testified that Yang accompanied them to the gun shop and stayed in the car, fully aware that the car was stolen and that his companions intended to rob the store and kill the owner if he "did anything stupid." One of the co-conspirators testified that they intended to steal guns to be used to fight against another gang. The jury also heard a tape-recorded statement by Yang and a police officer's statement describing another statement by Yang that can reasonably be construed as an admission that he accompanied his gang to the gun shop with full knowledge of their plan.

The jury rejected the defense argument that Yang was forced to accompany the gang. It reached its verdict based on an assessment of the witnesses' credibility. In light of the highly deferential standard of review, any challenge to the verdict would lack arguable merit. *See* ***State v. Alles***, 106 Wis.2d 368, 376-77, 316 N.W.2d 378, 382 (1982).

The record discloses no basis for challenging the admissibility of Yang's statements. The trial court found that the officers informed Yang of his ***Miranda***[1] rights and that Yang waived his rights. The court found that the statements were not coerced and admitted them into evidence. *See* ***State ex rel. Goodchild v. Burke***, 27 Wis.2d 244, 265, 133 N.W.2d 753, 764 (1965), *cert. denied*, 384 U.S. 1017 (1966). These findings are not clearly erroneous. *See* § 805.17(2), STATS. The defense objected to the admission of one of Yang's statements because the defense attorney had not seen the statement until shortly before the trial began. The defense also requested a continuance in light of the statement to allow counsel additional time to interview a witness. The trial court personally set up a weekend interview with the witness to avoid the prospect of delaying the trial. The record does not establish any prejudice to the defense from the trial court's refusal to delay the trial.

The record also supports the trial court's finding that the State excluded the only Asian-American juror on the panel for reasons other than race. The defense objected when the State struck the only Asian-American from the panel. The State answered the objection by stating that the reasons for striking the juror were that he had previously served on a jury that acquitted the defendant, he had trouble answering some of the prosecutor's questions and the prosecutor perceived that the prospective juror disliked the police. The trial court also noted that the juror was very anxious about work conflicts and that the only reason the court did not earlier excuse him was because he was the only juror of Asian descent. The court followed the procedures set out in ***Batson v. Kentucky***, 476 U.S. 79, 95-97 (1986), and appropriately found that the prosecutor did not engage in purposeful discrimination or act in a manner inconsistent with the Equal Protection Clause when he struck that juror.

Finally, there was no basis for challenging the exercise of the trial court's sentencing discretion. The court considered the seriousness of the offenses, Yang's character and the need to protect the public. *See* ***McCleary v. State***, 49 Wis.2d 263, 276, 182 N.W.2d 512, 519 (1971). The sentence imposed does not shock the public conscience. ***Ocanas v. State***, 70 Wis.2d 179, 185, 233 N.W.2d 457, 461 (1975).

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[1] ***Miranda v. Arizona***, 384 U.S. 436 (1966).

Our independent review of the record discloses no other basis for appeal. Therefore, we relieve Attorney Sheila Stuart Kelley from further representing Yang and affirm the judgment of conviction.

*By the Court.*—Judgment affirmed.