COURT OF APPEALS
DECISION
DATED AND FILED

March 11, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 98-1188-CR-NM

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

BEYAN K. STANLEY,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County: JACK F. AULIK, Judge. *Affirmed.*

Before Vergeront, Roggensack and Deininger, JJ.

PER CURIAM. Attorney William E. Schmaal, appointed counsel for Beyan K. Stanley, has filed a no merit report pursuant to RULE 809.32, STATS. Counsel provided Stanley with a copy of the report, and both counsel and this court advised him of his right to file a response. Stanley has not responded. Upon our independent review of the record as mandated by ***Anders v. California***, 386 U.S. 738

(1967), we conclude there is no arguable merit to any issue that could be raised on appeal.

Stanley was charged in the information with one count of possession of THC with intent to deliver, within 1,000 feet of a city park, and one count of possession of drug paraphernalia. Stanley moved to suppress certain evidence, and the motion was denied. Pursuant to a plea negotiation, he pleaded no contest to both counts, without the park enhancer. The court sentenced him to two years in prison on the THC count and thirty days, concurrently, on the drug paraphernalia count, as well as a $500 fine and suspension of driving privileges.

We previously concluded that there could be arguable merit to a plea withdrawal motion based on the inadequacy of the plea colloquy. We directed Stanley's counsel to consult with him and determine whether he would want to withdraw his plea and whether he could make the necessary additional allegations. Counsel informs us that Stanley does not want to withdraw his plea. Therefore, we do not consider plea-related issues any further.

The suppression issue is not waived by Stanley's plea. *See* § 971.31(10), STATS. Stanley's motion sought to suppress evidence that was obtained in a search of his basement bedroom in his parents' house. The search occurred with the consent of one or both of his parents. Based on the officers' testimony, which the trial court found credible, the searching officers could reasonably believe that Stanley's parent or parents had authority to consent to a search of Stanley's room. *See* ***Illinois v. Rodriguez***, 497 U.S. 177, 188-89 (1990). The evidence also supported the conclusion that his parents had common authority over the premises and could consent to a search. *See* ***State v. West***, 185 Wis.2d 68, 93, 517 N.W.2d 482, 490-91 (1994). There is no arguable merit to this issue.

Stanley could also argue that the court erroneously exercised its sentencing discretion. We will not disturb a sentence imposed by the trial court unless the court erroneously exercised its discretion. ***State v. Thompson***, 172 Wis.2d 257, 263, 493 N.W.2d 729, 732 (Ct. App. 1992). A trial court erroneously exercises its discretion:

> when it fails to state the relevant and material factors that influenced its decision, relies on immaterial factors, or gives too much weight to one sentencing factor in the face of other contravening considerations. The weight given to each sentencing factor, however, is left to the trial court's broad discretion. A trial court exceeds its discretion as to the length of the sentence imposed "only where the sentence is so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances."
>
> When imposing sentence, a trial court must consider: the gravity of the offense, the offender's character, and the public's need for protection. The trial court may also consider: the defendant's past record of criminal offenses; the defendant's history of undesirable behavior patterns; the defendant's personality, character and social traits; the presentence investigation results; the viciousness or aggravated nature of the defendant's crime; the degree of the defendant's culpability; the defendant's demeanor at trial; the defendant's age, educational background and employment record; the defendant's remorse, repentance or cooperativeness; the defendant's rehabilitative needs; the rehabilitative needs of the victim; and, the needs and rights of the public.

Id. at 264-65, 493 N.W.2d at 732-33 (citations omitted).

Here the trial court considered Stanley's juvenile record, the amount of THC possessed, his lack of effort at self-improvement since the offense, and the necessity of protecting the public. The court stated that it considered probation, but

concluded that was not appropriate because Stanley was essentially on probation through the juvenile court system, but that had not prevented further crimes. There is no arguable merit to this issue.

Our review of the record discloses no other potential issues for appeal. Attorney Schmaal is relieved from further representing Stanley in this matter.

By the Court.—Judgment affirmed.