

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

June 14, 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. 94-2685-CR-NM

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

**STATE OF WISCONSIN,**

**Plaintiff-Respondent,**

**v.**

**PHILLIP R. DUFFEY,**

**Defendant-Appellant.**

APPEAL from judgments and an order of the circuit court for Walworth County: MICHAEL S. GIBBS, Judge. *Judgments modified and, as modified, affirmed; order affirmed.*

Before Anderson, P.J., Nettesheim and Snyder, JJ.

PER CURIAM. Phillip R. Duffey, a/k/a Phillip R. Fenner, appeals from judgments of conviction and an order denying postconviction relief for two counts of possession with intent to deliver cocaine and two counts of bail jumping. As a result of plea negotiations, seven other criminal counts were dismissed upon his plea of guilty. Duffey was sentenced to ten years in prison and a \$1000 fine; five years in prison, consecutive, and stayed; two years in prison each for two additional counts, consecutive and stayed; and was placed on probation for fifteen years concurrent with his ten-year prison sentence with conditions including 100 hours of community service for each

year of probation and a \$5000 fine. Duffey received credit for 148 days pretrial incarceration.

Duffey's appellate counsel has filed a no merit report. *See Anders v. California*, 386 U.S. 738 (1967). Duffey has been provided a copy of the no merit report and informed of his right to file a response. No response has been received. The no merit report addresses two issues: (1) whether there is any basis to support a motion to withdraw the guilty plea and (2) whether the trial court erroneously exercised its sentencing discretion. It concluded that neither issue is of arguable merit.

We conclude that the no merit report correctly analyzed the issues it identified. Our independent review of the record discloses no potential appellate issues of arguable merit. We note, however, that the unambiguous oral pronouncement of the sentence is inconsistent with the written judgments with respect to the amount of fines imposed.<sup>1</sup> The unambiguous oral pronouncement controls. *State v. Perry*, 136 Wis.2d 92, 114, 401 N.W.2d 748, 758 (1987). Therefore, upon remittitur, we direct the trial court to correct the judgments to correspond with its oral pronouncement.

Because the record identifies no appellate issue of arguable merit, upon entry of the corrected judgments, Attorney Marjorie Wendt shall be discharged from further representation of Duffey in this matter.

*By the Court.*—Judgments modified and, as modified, affirmed; order affirmed.

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<sup>1</sup> The oral pronouncement shows that the trial court imposed a fine of \$1000 on count nine and the judgment indicates \$1800. Further, the judgment itself should be amended to indicate the 148, not 130, days of pretrial incarceration credit. The oral pronouncement imposed a \$5000 fine as a condition of probation on counts four, six and eleven and the judgment imposed \$9050.