COURT OF APPEALS
DECISION
DATED AND RELEASED

October 9, 1997

NOTICE

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.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 97-1066-CR-NM

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

KURT A. FLISRAM,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County: SARAH B. O'BRIEN, Judge. *Affirmed.*

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

PER CURIAM. Appointed counsel for Kurt A. Flisram, Attorney Tim Provis, has filed a no merit report pursuant to RULE 809.32, STATS. Counsel provided Flisram with a copy of the report, and both counsel and this court advised him of his right to file a response. Flisram 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.

Flisram was charged with two counts of burglary and two counts of felony bail jumping, all as a repeater. He pleaded no contest. The court sentenced him to ten years probation on each count, all concurrent with each other but consecutive to prison terms in cases which are not part of this appeal.

The no merit report addresses whether Flisram's plea was entered knowingly, voluntarily and intelligently. The supreme court has established certain standards that a plea colloquy must meet with respect to the defendant's understanding of the nature of the charge, the potential punishment, and the rights being waived by the plea. ***State v. Bangert***, 131 Wis.2d 246, 389 N.W.2d 12 (1986) and § 971.08(1)(a), STATS. Whenever the § 971.08 procedure is not undertaken, and the defendant alleges that he did not know or understand the information that should have been provided at the plea hearing, the burden shifts to the State to show by clear and convincing evidence that the plea was entered knowingly, voluntarily and intelligently. ***Bangert***, 131 Wis.2d at 274, 389 N.W.2d at 26.

There would be no merit to arguing that Flisram's plea failed to comply with the ***Bangert*** requirements. The trial court reviewed the rights he was giving up, described the elements of the crimes charged and the potential penalties, and accepted the criminal complaint as factual support for the charge.

The no merit report also addresses whether the court erroneously exercised its discretion in sentencing Flisram. 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." ***Id.*** at 264, 493 N.W.2d at 732 (citation omitted). When imposing a sentence, it is imperative the trial court consider: "the gravity of the offense, the offender's character, and the public's need for protection." ***Id.***, (citation omitted). However, the trial court has broad discretion in determining the weight to be given to each sentencing factor. ***Id.***

There would be no merit to arguing that the court erred in sentencing Flisram. The maximum possible sentence was many years in prison. The court withheld sentence and placed him on probation. The court considered appropriate factors in doing so.

We conclude, after a review of the record, that there is no arguable merit to these issues. Our review of the record discloses no other potential issues for appeal. Atty. Provis is relieved of further representing Flisram in this matter.

By the Court.—Judgment affirmed.