

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

January 22, 1998

Marilyn L. Graves  
Clerk, Court of Appeals  
of Wisconsin

**NOTICE**

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

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.

**No. 97-2202-CR-NM**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**RANDY J. BEATY,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Rock County:  
JOHN W. ROETHE, Judge. *Affirmed.*

Before Dykman, P.J., Vergeront and Roggensack, JJ.

PER CURIAM. Randy J. Beaty pled guilty to one count of robbery by use of force, as a repeater, contrary to §§ 943.32(1)(a) and 939.62, STATS. Pursuant to plea negotiations, a second robbery count was dismissed and read in at sentencing. The court sentenced Beaty to ten years, to run consecutively to any other sentence. Beaty's appellate counsel, Attorney Patrick M. Donnelly, has filed

a no merit report pursuant to RULE 809.32, STATS., and *Anders v. California*, 386 U.S. 738 (1967). Beaty has filed a response. Based on our review of the no merit report, Beaty's response and the record, we conclude that there are no arguable appellate issues. Therefore, we affirm the judgment of conviction.

The no merit report addresses whether Beaty's guilty plea was knowingly and voluntarily made. Beaty entered his plea as part of a plea agreement that was described at the outset of the plea colloquy. The second robbery charge was to be dismissed, and the State agreed to limit its recommendation to ten years, consecutive to any other sentence. A signed plea questionnaire was filed by Beaty, and he indicated that he had read and understood the form.<sup>1</sup> The court explained the maximum penalty and the elements of the crime. Beaty admitted that his actions satisfied each element of the crime. The court reviewed the various constitutional rights affected by a guilty plea, and Beaty told the court that he understood that each right would be waived by the guilty plea. Beaty admitted the prior conviction that formed the basis for the repeater enhancement. The facts of the crime were placed on the record and the court found that a factual basis existed. The transcript of the plea colloquy establishes that the trial court complied with the procedures set forth in § 971.08, STATS., and *State v. Bangert*, 131 Wis.2d 246, 266-72, 389 N.W.2d 12, 22-25 (1986). Therefore, we agree with appellate counsel that the record shows that Beaty entered his plea knowingly and voluntarily. A postconviction challenge to the validity of the plea would lack arguable merit.

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<sup>1</sup> In his response, Beaty complains that he did not "complete" the form, but merely "signed" it. We see no material distinction between the two concepts, especially since Beaty assured the trial court that he had read the questionnaire and that he understood its contents.

Counsel also addresses whether the court properly exercised its sentencing discretion. We agree with counsel's assessment that a postconviction challenge to the sentence would be frivolous.

Sentencing lies within the sound discretion of the trial court, and a strong policy exists against appellate interference with that discretion. *See State v. Haskins*, 139 Wis.2d 257, 268, 407 N.W.2d 309, 314 (Ct. App. 1987). The trial court is presumed to have acted reasonably and the defendant has the burden to show unreasonableness from the record. *See id.* The primary factors to be considered by the trial court in sentencing are the gravity of the offense, the character of the offender, and the need for the protection of the public. *State v. Harris*, 119 Wis.2d 612, 623, 350 N.W.2d 633, 639 (1984). The weight to be given the various factors is within the trial court's discretion. *Cunningham v. State*, 76 Wis.2d 277, 282, 251 N.W.2d 65, 67-68 (1977).

The court considered the impact of the crime on the victim and the need to protect other members of the community from Beaty's criminal conduct. The court also considered Beaty's character and his substantial prior criminal record. While the court recognized Beaty's apparent "sincerity," it noted that Beaty had previously failed to take advantage of the rehabilitative opportunities presented to him. The court pointed to Beaty's cocaine addiction and that the "numerous interventions in an attempt to deal with your drug abuse problem ... have not been successful in rehabilitating you." The court concluded that Beaty's "relatively lengthy track record of criminal misconduct and inability to rehabilitate" underscored the public's need for protection. The record shows that the court considered the relevant factors.

Nothing in Beaty's response warrants further appellate proceedings. Beaty claims that his trial counsel was ineffective because he waived a preliminary hearing. The record shows that the court explained the nature of a preliminary hearing to Beaty, and that Beaty understood and intelligently and voluntarily waived his right to a preliminary hearing. Beaty acknowledged that his attorney had "answered any or all ... questions about the waiver and the consequences" and that he had "enough time" to discuss the matter with counsel. Beaty's broad assertion of ineffectiveness is not supported by the record.

Beaty next asserts that trial counsel was ineffective because Beaty was not shown the presentence investigation (PSI) prior to the day of sentencing. Without citation, Beaty asserts that the rules of the Division of Intensive Sanctions (DIS) require the PSI to be given to a defendant ten days before sentencing. We are not aware of any such rule, nor does the record indicate that a DIS rule would apply to Beaty. In any event, Beaty indicated at sentencing that he had reviewed the PSI, and in fact he advised the court of several corrections he believed should be made.

Beaty makes a conclusory assertion that his trial counsel was ineffective. Beaty does not elaborate, and we need not address the claim further. We also note that Beaty told the court during the plea colloquy that he was satisfied with his attorney's representation.

Lastly, Beaty complains about trial counsel's failure to file a notice of intent to pursue postconviction relief within twenty days of sentencing. *See* RULE 809.30(2)(b), STATS. Although counsel did not file the notice within the

twenty days contemplated by the rule, this court extended the deadline, and a timely notice of intent was filed. Beaty was not prejudiced by counsel's conduct.<sup>2</sup>

Based on an independent review of the record, this court finds no basis for reversing the judgment of conviction. Any further appellate proceedings would be without arguable merit within the meaning of *Anders* and RULE 809.32, STATS. Accordingly, the judgment of conviction is affirmed, and Attorney Patrick M. Donnelly is relieved of any further representation of Beaty in this appeal.

*By the Court.*— Judgment affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5., STATS.

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<sup>2</sup> Beaty also asserts that he was prejudiced by the delay in initiating the appellate process because he will be unable to adequately defend himself in the event of a reversal and retrial. Since this court is affirming the judgment of conviction, Beaty's assertion is inconsequential.

