

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 20, 1997

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. 97-2696-CR-NM

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

TERRENCE D. ROSS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County:
MICHAEL N. NOWAKOWSKI, Judge. *Affirmed.*

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

PER CURIAM. Terrence D. Ross pled no contest to taking and driving a motor vehicle without the owner's consent in violation of § 943.23(2), STATS. In exchange for the plea, the prosecution moved to dismiss a repeater allegation. The trial court found Ross guilty and sentenced him to three years in prison, consecutive to a prison sentence he was serving. The court also imposed

costs and surcharges totaling ninety dollars to be paid within sixty days. The record includes a commitment order issued because they were not paid.

The state public defender appointed Attorney Mark S. Rosen to represent Ross on appeal. Attorney Rosen has filed a no merit report pursuant to RULE 809.32, STATS., and *Anders v. California*, 386 U.S. 738 (1967). Ross received a copy of the no merit report and was advised of his right to file a response. He has not done so.

According to the allegations in the complaint, which were the basis for the adjudication of guilt, Ross and the owner of the vehicle stopped at a fast food restaurant in Madison, Wisconsin, with several children. The owner and the children went inside, leaving Ross in the vehicle. Ross drove off, stranding the owner and the children, who were from Beloit, Wisconsin. The vehicle was recovered several days later in Illinois.

The no merit report addresses whether Ross's no contest plea was knowingly, intelligently, and voluntarily entered and whether the trial court erroneously exercised its discretion when imposing sentence. Rosen concludes that these possible issues have no arguable merit. Based upon our independent review of the record, we conclude that his analysis of the issues is correct.

In order to assure that a plea is knowingly, voluntarily, and intelligently entered, the trial court is obligated to ascertain that a defendant understands the nature of the charge to which he or she is pleading, the potential punishment for the charge, and the constitutional rights being relinquished by entering a guilty or no contest plea. *See State v. Bangert*, 131 Wis.2d 246, 260-62, 389 N.W.2d 12, 20-21 (1986). The plea colloquy between Ross and the trial court, which incorporated a plea questionnaire Ross completed, satisfied this

standard. See *State v. Moederndorfer*, 141 Wis.2d 823, 827-28, 416 N.W.2d 627, 629-30 (Ct. App. 1987) (trial court colloquy may be supplemented by a plea questionnaire). Additionally, the court adduced that an adequate factual basis existed for finding Ross guilty of the charges. See § 971.08(1)(b), STATS.

Sentencing is within the trial court's discretion, *State v. Larsen*, 141 Wis.2d 412, 426, 415 N.W.2d 535, 541 (Ct. App. 1987), and the court is presumed to have acted reasonably, *State v. Haskins*, 139 Wis.2d 257, 268, 407 N.W.2d 309, 314 (Ct. App. 1987). The defendant bears the burden of showing, from the record, that a sentence is unreasonable. *Id.* Here, the trial court considered the gravity of the offense and Ross's record to determine that a medium length prison sentence, and not probation, was appropriate.

Our independent review of the record did not disclose any additional potential issues for appeal. Therefore, any further proceedings on Ross's behalf would be frivolous and without arguable merit within the meaning of *Anders* and RULE 809.32(1), STATS. Accordingly, the judgment of conviction is affirmed, and Rosen is relieved of any further representation of Ross on this appeal.

By the Court.—Judgment affirmed.

