COURT OF APPEALS
DECISION
DATED AND RELEASED

July 20, 1995

No. 95-0781-CR-NM

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

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

DAVID L. S.,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for La Crosse County: MICHAEL J. MULROY, Judge. *Affirmed.*

Before Eich, C.J., Gartzke, P.J., and Vergeront, J.

PER CURIAM. Pursuant to a negotiated plea, David L. S.[1] pled guilty to one count each of sexual assault of a child in violation of § 948.02(1), STATS., and sexual assault of a child in violation of § 948.02(2). Two incest

[1] The caption has been amended to include only Appellant's initials in order to remove information that may identify the victims of Appellant's offenses.

counts and two counts of intimidation of victims were dismissed and read-in for sentencing. David L. S. was sentenced to ten years in prison for the violation of § 948.02(2). Sentence for the § 948.02(1) violation was withheld, and David L. S. was placed on probation for twenty years, to be served consecutive to the prison sentence.

Timothy J. Gaskell, whom the state public defender appointed to represent David L. S. on appeal, filed a no merit report pursuant to RULE 809.32, STATS., and ***Anders v. California***, 386 U.S. 738 (1967). David L. S. received a copy of the no merit report and was advised of his right to file a response. He has not responded. From our independent review of the record, we conclude that Gaskell correctly analyzes the issues raised in the no merit report as lacking arguable merit.

The no merit report addresses whether David L. S.'s guilty pleas were knowingly, intelligently and voluntarily entered. In order to ensure that a plea is knowingly, intelligently and voluntarily entered, the trial court is obligated by § 971.08(1)(a), STATS., to ascertain that a defendant understands the nature of the charges to which he or she is pleading, the potential punishment or those charges and the constitutional rights being relinquished by entering a guilty or no contest plea. *See* ***State v. Bangert***, 131 Wis.2d 246, 265-66, 389 N.W.2d 12, 21-22 (1986). The plea colloquy between David L. S. and the trial court satisfied this standard. The court also adduced an adequate factual basis for finding David L. S. guilty of the charges. *See* § 971.08(1)(b).

The no merit report also addresses whether the trial court erroneously exercised its discretion when imposing sentence. 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.***

The sentencing court gave the greatest weight to the seriousness of the offenses, David L. S.'s sexual assault of his two daughters. Approximately two hundred acts of sexual assault had been committed against the minors, who had been emotionally injured by the assaults. The court believed that

David L. S. should be held accountable for the damage he caused. Although the court perceived that David L. S. did not recognize the seriousness of the offenses or accept responsibility for his actions, the court did consider such indications of character as his regular employment and lack of a criminal record as militating against the maximum prison sentence. The sentencing court properly exercised its discretion.

Finally, the no merit report addresses whether the State violated the plea agreement. Gaskell indicates that David L. S. alleges that the State's sentencing recommendation deviated from the plea agreement. If true, this would entitle David L. S. to relief. *See* ***State v. Poole***, 131 Wis.2d 359, 361, 394 N.W.2d 909, 910 (Ct. App. 1986) (defendant entitled to relief if State fails to perform its part of plea agreement). The written statement of the negotiated plea and the transcript of the plea hearing establish that no agreement was reached regarding a sentence recommendation. Therefore, the record establishes that this claim is also without merit.

Our independent review of the record did not disclose any additional potential issues for appeal. Therefore, any further proceedings on David L. S.'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 Gaskell is relieved of any further representation of David L. S. on this appeal.

By the Court. – Judgment affirmed.

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