COURT OF APPEALS
DECISION
DATED AND RELEASED

June 15, 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. 95-0812-CR-NM

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

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

RALPH E. HARRIS,

Defendant-Appellant,

APPEAL from a judgment of the circuit court for Sauk County: JAMES EVENSON, Judge. *Affirmed*.

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

PER CURIAM. Ralph E. Harris pleaded no contest to one count of first-degree sexual assault of a child, a violation of § 948.02(1), STATS. Based on that plea, the trial court found Harris guilty and sentenced him to a ten-year prison term.

The state public defender appointed Attorney David H. Nispel to represent Harris on appeal. Attorney Nispel has filed a no merit report with this court pursuant to ***Anders v. California***, 386 U.S. 738 (1967), and RULE 809.32, STATS. Attorney Nispel provided Harris with a copy of the no merit report, and Harris was advised that he could respond to the report. Harris has not filed a response. Based on our independent review of the record as required by ***Anders***, we conclude that there is no issue of arguable merit that Harris could raise on appeal. We therefore affirm the judgment of conviction.

Three criminal complaints were filed against Harris. Two of the complaints involved charges of sexual assault of children not yet sixteen years of age. The third complaint charged one count of sexual assault of a child not yet thirteen years of age, and one count of sexual assault of a child not yet sixteen years of age. Pursuant to a plea bargain, Harris pleaded no contest to the one charge of sexually assaulting a child under the age of thirteen. The other complaints and charges were dismissed, but were to be "read in" for sentencing purposes. Consistent with the plea bargain, the trial court ordered Harris to undergo a "sexual-offender evaluation." The trial court also ordered a presentence investigation report.

At the sentencing hearing, the trial court heard lengthy arguments from counsel, in addition to statements from the victim's father, and Harris's wife, "niece,"[1] and minister. The trial court considered the presentence report and the sexual-offender evaluation. It then imposed the ten-year sentence on Harris.

The no merit report does not address whether Harris entered his plea knowingly, intelligently, and voluntarily. Based on our independent review of the record, however, we are satisfied that the plea colloquy between Harris, his counsel, and the trial court was sufficient to meet the requirements of § 971.08, STATS., and ***State v. Bangert***, 131 Wis.2d 246, 267-72, 389 N.W.2d 12, 23-25 (1986). More specifically, the record shows that Harris completed a plea questionnaire and waiver-of-rights form that set forth, among other things, the elements of the charges against him, and the constitutional rights he was

[1] Although the witness called Harris her uncle, she stated that her "mom's boyfriend is [Harris's wife's] brother."

relinquishing by pleading no contest. *See* ***State v. Moederndorfer***, 141 Wis.2d 823, 416 N.W.2d 627 (Ct. App. 1987) (guilty-plea questionnaire can serve as the basis of a court's determination that a plea is knowing and voluntary). The trial court also engaged in a personal colloquy with Harris regarding much of the same material covered by the plea questionnaire. In that colloquy, Harris affirmed, among other things, that he understood that he was waiving certain constitutional rights by pleading no contest, that he was entering his plea freely and voluntarily, and that he understood that the trial court was free to impose the maximum twenty-year sentence. *See* ***State v. Hansen***, 168 Wis.2d 749, 756, 485 N.W.2d 74, 77 (Ct. App. 1992) (when guilty-plea questionnaire is submitted, trial court must nonetheless establish through personal colloquy with defendant that he or she is waiving the applicable constitutional rights). There would be no arguable merit to an appeal challenging the voluntariness of Harris's plea.[2]

We are also satisfied that the trial court adduced an adequate factual basis to support the plea. *See* ***Christian v. State***, 54 Wis.2d 447, 457, 195 N.W.2d 470, 475-76 (1972) (trial court's inquiry must be sufficient to establish a factual basis for the plea). Here, the trial court used the criminal complaint to provide the factual basis for the plea. There would be no arguable merit to an appeal challenging the validity of Harris's plea on this basis.

The no merit report addresses whether the trial court properly exercised its discretion when it sentenced Harris. Sentencing lies within the trial court's discretion and our review is limited to whether the trial court misused its discretion. ***State v. Larsen***, 141 Wis.2d 412, 426, 415 N.W.2d 535, 541 (Ct. App. 1987). The primary factors for the sentencing court to consider are the gravity of the offense, the character of the offender, and the public's need for protection. ***Id***. at 427, 415 N.W.2d at 541.

[2] We wish to note that the plea agreement provided that the sexual-offender evaluation was to be conducted by Lloyd Sinclair. After entry of the plea, the trial court discovered that Sinclair was not available to conduct the evaluation, and ordered another person trained by Sinclair to conduct the evaluation. The trial court held a hearing, at which time defense counsel noted that Sinclair's participation had been a condition of the plea negotiations. Defense counsel requested information regarding the replacement's background and qualifications, but never specifically objected to the trial court's action.

The record shows that the trial court carefully considered all the relevant sentencing factors after hearing the arguments of counsel and the statements of family members and clergy. The trial court recognized that the sentence it imposed was more severe than that provided by the sentencing guidelines, but it explained its reasons for departing from the guidelines. The sentence itself, which was half the maximum sentence for the crime and less than the prison sentence recommended by the State, was neither harsh nor unconscionable. *See* ***Ocanas v. State***, 70 Wis.2d 179, 185, 233 N.W.2d 457, 461 (1975) (sentences within the permissible range set by statute are harsh and excessive when so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people).

Based upon our independent review of the entire record, we are satisfied that there are no other issues of arguable merit that Harris could raise on appeal. Attorney Nispel is therefore relieved of further representation of Harris in this appeal.

By the Court.--Judgment affirmed.