COURT OF APPEALS
DECISION
DATED AND RELEASED

August 13, 1996

NOTICE

Nos. 96-0663-CR
96-0664-CR
96-0665-CR
96-0666-CR

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

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

LYLE W. JOURDAN,

Defendant-Appellant.

APPEAL from judgments and orders of the circuit court for Brown County: DONALD J. HANAWAY and WILLIAM C. GRIESBACH, Judges. *Affirmed.*

MYSE, J. Lyle W. Jourdan appeals from judgments and orders denying his motion to modify his sentence based upon the enhanced penalties provided under §§ 346.65(2)(e) and 343.44(2g)(e), STATS. Jourdan alleges that the State failed to prove, and he did not admit, his prior convictions for operating a motor vehicle while intoxicated and operating a motor vehicle after suspension or revocation. Because this court concludes that Jourdan admitted these were the sixth, seventh, and eighth convictions for both the offenses of operating a motor vehicle while intoxicated and after revocation or suspension,

which is sufficient for the imposition of enhanced penalties, the order denying the motion for modification of sentence is affirmed.

Jourdan was charged with three counts of operating a motor vehicle while intoxicated (OWI) contrary to § 346.63(1)(a), STATS.; three counts of operating a motor vehicle with a prohibited blood alcohol concentration contrary to § 346.63(1)(b), STATS., and four counts of operating a motor vehicle after suspension or revocation as an habitual traffic offender contrary to § 343.44(1), § 343.44(2g)(e), and § 343.31(3)(g), STATS. In each case, the counts were the sixth and sequential convictions for the respective offenses. He was also charged with one count of bail jumping contrary to § 946.49(1)(a), STATS., which conviction was not appealed.

A plea agreement was reached allowing Jourdan to enter no contest pleas to the OWI charges sixth, seventh, and eighth, and a single count of operating after revocation, sixth. Jourdan read and signed a plea questionnaire and waiver form. The form indicated that he would enter pleas to "operating while intoxicated—6th, 7th & 8th" and "operating after revocation—6th (1 count)." The court conducted a personal colloquy with Jourdan, who acknowledged that the factual basis for the offenses as alleged in the complaint were correct.

In accordance with the plea agreement, the State then moved to dismiss the three alternative blood alcohol concentration charges and the habitual traffic offender allegations, as well as three of the associated operating after revocation charges. The court then imposed a sentence of one year in the county jail on each OWI count to be served consecutively and a $1,000 fine on each count. Jourdan was also sentenced to one year in the county jail and a $2,000 fine for the operating after revocation offense, which period of confinement was to be served concurrently with the other jail sentences.

Jourdan filed a postconviction motion to modify his sentences based on his contention that the enhanced penalties could not be imposed because the State failed to prove his prior convictions and he had not admitted the convictions as required by Wisconsin law.

The facts of record in this case are undisputed. Whether the record satisfies the statutory requirement necessary to enhance the penalties provided by chs. 343 and 346, STATS., presents a question of law this court resolves without deference to the trial court's determination. ***State v. Keith***, 175 Wis.2d 75, 78, 498 N.W.2d 865, 866 (Ct. App. 1993).

Jourdan asserts that the general principles of law applicable to criminal repeater statutes in §§ 939.62 and 973.12, STATS., are applicable to the enhanced penalties provided for traffic offenses which are defined by statute as being criminal in nature. Jourdan argues that under the criminal penalty enhancer provisions, the State is required to prove each of the relevant prior convictions before enhanced penalties can be assessed unless the defendant admits the repeater allegation. Jourdan argues that under ***State v. Farr***, 119 Wis.2d 651, 350 N.W.2d 640 (1984), the defendant's admission must be personal and may not be inferred from the record. Jourdan argues that because the requirement of a personal admission by the defendant involves important due process considerations, the analysis assumes constitutional dimensions. He therefore concludes that the record is insufficient to meet the important requirements enunciated in ***Farr***.

This court does not agree. Jourdan expressly admitted, for sentencing purposes, his previous five convictions for OWI and operating a motor vehicle after suspension or revocation to the trial court. First, the record discloses that Jourdan personally read, understood, and signed a plea questionnaire and waiver form indicating the offenses charged were his sixth, seventh and eighth offenses. This admission means nothing if it does not mean that these were the sixth and sequential convictions for sentencing purposes.

Second, during the colloquy with the court, Jourdan acknowledged that the factual allegations contained in the complaint were accurate. The complaint states that he had five prior convictions for operating after revocation and that he is an habitual traffic offender. Further, the complaint clearly discloses the enhanced penalties to be imposed. The complaint reads that "the court shall, for the sixth conviction in five years, impose the penalty of a fine of not less than $2,000 nor more than $2,500 and

imprisonment for not less than 6 months nor more than 1 year and a 6-month revocation of driving privileges."

Because he acknowledged in open court that the allegations in the complaint were true, it follows that Jourdan admitted this was his sixth and sequential convictions for sentencing purposes. Based upon the totality of this evidence, this court concludes that the oral acknowledgment, coupled with the written acknowledgment in the guilty plea questionnaire and waiver form, are sufficient to constitute an unambiguous admission by Jourdan as to the applicability of the enhanced penalty provisions for operating a motor vehicle while intoxicated and after suspension or revocation for a fifth and subsequent conviction as provided by §§ 343.44(2g(e) and 346.65(2)(e); STATS.

An argument could be made that these admissions by Jourdan are insufficient to establish the relevant time period of those convictions for sentencing purposes. We conclude, however, that the admissions are sufficient. The only relevant period for sentencing purposes involves the previous five-year and ten-year time span as set forth in §§ 343.44 (2g)(e) and 346.65(2)(e), STATS. By admitting to the veracity of the complaint's allegations, Jourdan acknowledged the applicability of the penalty enhancing provisions and the timing of the previous convictions. Pleading to OWI sixth would have no purpose other than to acknowledge the applicability of the penalty enhancing provisions. Therefore, Jourdan's admissions were sufficient to establish that the convictions occurred within the relevant time period.

Because this court has concluded that Jourdan admitted the existence of the prior convictions and their applicability to enhance the penalties of the offenses charged in these cases, this court need not address the question whether the enhanced penalty provision contained in the traffic code is subject to the same procedural requirements as a penalty enhancer statute applicable to nontraffic criminal charges. Accordingly, that question is not addressed by this opinion.

By the Court.—Judgments and orders affirmed.

This opinion will not be published. RULE 809.23(1)(b)4, STATS.