COURT OF APPEALS
DECISION
DATED AND RELEASED

OCTOBER 1, 1996

No. 96-0698-CR

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

STATE OF WISCONSIN,

Plaintiffs-Respondents,

v.

TIMOTHY R. PAMONICUTT,

Defendant-Appellant.

APPEAL from a judgment and an order of the circuit court for Shawano County: EARL SCHMIDT, Judge. *Affirmed.*

CANE, P.J. Timothy Pamonicutt appeals the sentence portion of his convictions for operating a motor vehicle while intoxicated, fifth offense, and operating a motor vehicle after revocation, fourth offense. Pamonicutt 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 Pamonicutt admitted as part of the plea bargain that this was his fifth OWI offense and fourth OAR offense, which is sufficient for the imposition of enhanced penalties, the judgment and order are affirmed.

The procedure in this case is undisputed. As part of a plea bargain, Pamonicutt entered a no contest plea to the charges of operating a motor vehicle while intoxicated, fifth offense, and operating a motor vehicle after revocation, fourth offense. In exchange for the plea on the OWI charge, the prosecutor recommended one year in the county jail, three years' revocation of Pamonicutt's driving privileges and a fine and costs of $2,780. The prosecutor also recommended a consecutive sixty days in jail, six months revocation of operating privileges and a fine and costs of $1,915 on the OAR offense. In the plea colloquy, the trial court informed Pamonicutt of the penalties he was facing and at no time did Pamonicutt or his attorney dispute the number of prior offenses as alleged in the criminal complaints. The court accepted Pamonicutt's pleas and sentenced him in accordance with the plea bargain as recommended by the prosecutor.

Pamonicutt filed a postconviction motion to modify his sentences 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. On appeal, Pamonicutt does not challenge the voluntariness of his pleas, but rather argues that the State failed to prove the penalty enhancers as required in the general repeater statute.

Because the facts of record in this case are undisputed, whether the record satisfies the statutory requirement necessary to enhance the penalties 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).

Essentially, Pamonicutt 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. He argues that under the criminal enhancer provisions, the State is required to prove each of the relevant prior convictions before the enhanced penalties can be assessed unless the defendant admits the repeater allegation.

In ***State v. Rachwal,*** 159 Wis.2d 494, 509, 465 N.W.2d 490, 496 (1991), the supreme court held under circumstances similar to this case that the

defendant's plea of no contest constituted an admission to all the facts alleged in the action, including those pertaining to the prior convictions.

The court stated:

> We conclude that, under the circumstances of this case, a plea of guilty or no contest to a criminal complaint containing a "repeater provision" alleging a prior conviction constitutes, under sec. 973.12, Stats., an admission by the defendant of such prior conviction so that the state need not prove such prior conviction for purposes of sentence enhancement according to sec. 939.62.

Id. at 512-13, 465 N.W.2d at 497.

As in ***Rachwal***, Pamonicutt knew his plea would constitute an admission of his prior convictions. During the plea colloquy with the court, Pamonicutt acknowledged that the factual allegations contained in the complaint were true. The court informed him that his no contest plea would subject him to the maximum penalties which were in excess of the prosecutor's recommendation. Pamonicutt was free to challenge and present evidence at the sentencing stage of these proceedings to rebut any of the factual allegations charging him as a fifth offense OWI offender and fourth offense OAR offender. He presented no such evidence and never challenged the factual allegations. Accordingly, the trial court was correct in finding that Pamonicutt had admitted the allegations in the complaint.

Because this court concludes that Pamonicutt admitted the existence of the prior convictions and their applicability to enhance the penalties of the OWI and OAR charges, 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.

By the Court.—Judgment and order affirmed.

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