

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 27, 2005

Cornelia G. Clark
Clerk of Court of Appeals

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 WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2005AP948-CR

Cir. Ct. No. 2003CM6071

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

JAMALE A. BONDS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: MARSHALL B. MURRAY, Judge. *Affirmed.*

¶1 WEDEMEYER, P.J.¹ Jamale A. Bonds appeals from a judgment entered after a jury found him guilty of battery, as a habitual criminal, contrary to

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2003-04).

WIS. STAT. §§ 940.19(1) and 939.62 (2003-04).² He also appeals from an order denying his postconviction motion. Bonds's only claim relates to the habitual criminality portion of the conviction. He argues that the State failed to prove his status as a habitual criminal and, therefore, the trial court erred in sentencing him as a repeat offender. Because Bonds had sufficient notice that he was being charged as a repeat offender, and because the State produced sufficient proof to establish that he was a repeat offender, this court rejects his claim that it was erroneous to sentence him as a habitual criminal.

BACKGROUND

¶2 On August 1, 2003, Bonds was charged with battery, as a habitual criminal. In order to support the repeater allegation, the State attached three certified judgments of conviction in three misdemeanor cases to the complaint. In these prior cases, Bonds had been convicted of battery, bail jumping, disorderly conduct, and criminal damage to property on April 15, 1998; he was sentenced on August 20, 1999.

¶3 Bonds entered a not guilty plea and the case proceeded to trial. A jury found him guilty of battery on July 1, 2004. At the sentencing hearing, the State acknowledged the three misdemeanor judgments, but advised the court that it intended to rely on Bonds's April 16, 1998 felony conviction for forgery in order to support the habitual criminality penalty enhancer. The State presented a CCAP record showing that Bonds was convicted of a felony on April 16, 1998, and CJIS

² All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted. The jury convicted on the underlying charge of battery. The court determined, prior to sentencing, that Bonds was in fact a habitual criminal.

records showing that he was in the county jail from July 26, 1999, to May 8, 2000. The court engaged in a colloquy with Bonds regarding the forgery felony, during which Bonds never denied the fact of the conviction. Bonds's only objection was in regard to his misunderstanding about the tolling of time for the purpose of the five-year time period within the habitual criminality statute. At first, Bonds did not understand that any time he spent in jail did not count in the five-year repeater calculation. After the trial court explained this to him, Bonds made no further argument.

¶4 The trial court found Bonds was a habitual criminal and sentenced him to a two-year sentence, broken down into eighteen months' initial confinement, followed by six months of extended supervision. Judgment was entered.

¶5 Bonds filed a postconviction motion, claiming that the State failed to prove he was a repeat offender and the trial court erred in sentencing him as a repeat offender. The trial court summarily denied the motion by written order. Bonds now appeals.

DISCUSSION

¶6 Bonds claims the State should not have been allowed to orally amend the basis for the habitual criminality charge during the sentencing hearing, that the State failed to establish that he was a habitual criminal, and that the trial court erred in finding that he was a habitual criminal. This court rejects all of Bonds's arguments.

¶7 The issue here—whether penalties based on Bonds's status as a repeat offender were properly applied—involves the application of WIS. STAT.

§ 973.12(1) to a set of undisputed facts. Accordingly, this case presents a question of law, which this court reviews independently. *State v. Saunders*, 2002 WI 107, ¶15, 255 Wis. 2d 589, 649 N.W.2d 263.

¶8 WISCONSIN STAT. § 973.12(1) provides in pertinent part:

Whenever a person charged with a crime will be a repeater ... under s. 939.62 if convicted, any applicable prior convictions may be alleged in the complaint, indictment or information or amendments so alleging at any time before or at arraignment, and before acceptance of any plea.... If the prior convictions are admitted by the defendant or proved by the state, he or she shall be subject to sentence under s. 939.62 unless he or she establishes that he or she was pardoned on grounds of innocence

¶9 The habitual criminality statute, WIS. STAT. § 939.62, provides in pertinent part:

(1) If the actor is a repeater, as that term is defined in sub. (2), and the present conviction is for any crime for which imprisonment may be imposed ... the maximum term of imprisonment prescribed by law for that crime may be increased as follows:

....

(2) The actor is a repeater if the actor was convicted of a felony during the 5-year period immediately preceding the commission of the crime for which the actor presently is being sentenced, or if the actor was convicted of a misdemeanor on 3 separate occasions during that same period, which convictions remain of record and unreversed. It is immaterial that sentence was stayed, withheld or suspended, or that the actor was pardoned In computing the preceding 5-year period, time which the actor spent in actual confinement serving a criminal sentence shall be excluded.

¶10 Bonds first asserts that the State should not have been allowed to amend the basis for the repeater status from that which was attached to the

complaint. This court rejects his contention. As adequately explained by the trial court in its order denying Bonds's postconviction motion:

Section 973.12(1), Stats., precludes *post-plea* repeater amendments which violate due process by not sufficiently notifying the defendant of the possible punishment at the time of the plea. State v. Wilks, 165 Wis. 2d 102 (Ct. App. 1991). In this instance, the defendant did not enter a plea but rather was convicted of the underlying charge by a jury. Under this circumstance, the State was not prohibited from amending the repeater allegation at the sentencing hearing, provided that the defendant was not prejudiced. Here, the defendant suffered no prejudice because he was charged as a repeater, and therefore, he was put on notice that he was in jeopardy of an enhanced sentence as a repeater. The amendment did not change his status as a repeater or the extent of the potential punishment he faced.

¶11 This court adopts the trial court's reasoning as its own. Because Bonds had proper notice that he was being charged as a repeater, and the State's decision to rely on the felony, rather than the three misdemeanors, did not prejudice him, Bonds's argument is without merit.

¶12 Bonds also argues that the State's proof was unreliable and insufficient to support the habitual criminality status. This court disagrees.

¶13 Again, this court adopts the trial court's decision on this issue:

In this case, the State presented as proof of the defendant's prior felony conviction printouts of the CCAP record for case 98CF001386 and a CJIS booking record showing the dates of the defendant's incarceration from 1997 through 2004. This information indicated that the defendant had been convicted of a felony offense within the five-year period preceding the commission of the offense in the instant case, excluding the time he was incarcerated from July 26, 1999 to May 8, 2004. A CCAP printout is not a judgment of conviction; however, CCAP is the official government record of the case, and the information contained in a judgment of conviction is taken directly from the CCAP record. Although the defendant complains

that the information contained in a CCAP record may be inaccurate, the potential for inaccuracy in the record does not necessarily preclude the State from offering the CCAP record as proof of a prior judgment of conviction when the defendant makes no objection to the submission of the document.

¶14 Here, the record reflects that Bonds did not object to the use of the CCAP record to establish his prior felony forgery conviction. He did not object to the use of the CJIS printout. Bonds's only concern was with the calculation of the five-year period preceding his conviction for purposes of the repeater provision, which the trial court fully explained to him.

¶15 Further, the transcript reflects that Bonds indicated to the court that he "missed all of [19]98 with my kids," that he was "revoked for absconding," and that he "just did two years in prison." Taken in context of all that had transpired on the record, Bonds clearly did not deny that he had the prior felony forgery conviction, which supported his status as a habitual criminal.

¶16 Based on the foregoing, this court concludes that the State did satisfy the burden necessary for the trial court to conclude that Bonds was, in fact, a habitual criminal. As such, the trial court did not err in sentencing him as a repeat offender. Accordingly, the judgment and order are affirmed.

By the Court.—Judgment and order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

