

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 23, 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. 2004AP3190-CR

Cir. Ct. No. 2001CF3936

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

PAUL N. STREFF,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
KAREN E. CHRISTENSON, Judge. *Affirmed.*

Before Vergeront, Deininger and Higginbotham, JJ.

¶1 PER CURIAM. Paul Streff appeals from an order denying his postconviction motion for sentence modification. He raises a series of arguments challenging the repeater portion of his sentence. We affirm for the reasons discussed below.

¶2 Wisconsin has a repeater statute which allows the maximum available penalty for a particular offense to be increased based upon the offender's habitual criminality. WISCONSIN STAT. § 939.62(2) (2003-04)¹ provides:

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, unless such pardon was granted on the ground of innocence. In computing the preceding 5-year period, time which the actor spent in actual confinement serving a criminal sentence shall be excluded.

Prior convictions must be “admitted by the defendant or proved by the state” before an enhanced penalty may be applied. WIS. STAT. § 973.12(1). Concessions made by the defendant at the plea hearing or information contained in a presentence report may be sufficient to establish a prior conviction for purposes of the repeater statute. See *State v. Goldstein*, 182 Wis. 2d 251, 255-57, 513 N.W.2d 631 (Ct. App. 1994); *State v. Caldwell*, 154 Wis. 2d 683, 694, 454 N.W.2d 13 (Ct. App. 1990).

¶3 Here, an amended information charged Streff with having recklessly caused the death of his girlfriend on July 22, 2001, and having been convicted of a felony during the five-year period immediately preceding the commission of the charged crime. At his plea hearing, both defense counsel and Streff personally acknowledged that Streff had been convicted of forgery on April 13, 1995,

¹ All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

incarcerated until May 2, 1996, and had subsequently spent another eighty-three days in custody for that offense due to parole violations. Streff now contends that his admissions were insufficient to establish that he had been convicted of a felony within the immediately preceding five-year period because he was actually adjudged guilty of the forgery charge on January 23, 1995, when he entered a plea in that case.

¶4 It is true that an adjudication of guilt following a plea may be used to establish a prior conviction for purposes of the repeater statute if a defendant has not yet been sentenced. *State v. Wimmer*, 152 Wis. 2d 654, 656, 664-65, 449 N.W.2d 621 (Ct. App. 1989). Once a written judgment of conviction has been entered, however, that document is properly used to establish the date of a prior conviction for purposes of the repeater statute. *Mikrut v. State*, 212 Wis. 2d 859, 869-70, 569 N.W.2d 765 (Ct. App. 1997); *Goldstein*, 182 Wis. 2d at 258-59; *Wimmer*, 152 Wis. 2d at 664.

¶5 We are satisfied that *Mikrut* and *Goldstein* control the outcome here.² Based upon those cases, counsel did not provide ineffective assistance and the circuit court did not err in relying upon the date of the judgment of conviction to determine whether the prior conviction had occurred within five years preceding the present offense. Furthermore, the circuit court properly relied upon

² Although Streff contends the interpretation set forth in *Mikrut v. State*, 212 Wis. 2d 859, 869-70, 569 N.W.2d 765 (Ct. App. 1997) and *State v. Goldstein*, 182 Wis. 2d 251, 258-59, 513 N.W.2d 631 (Ct. App. 1994), is unconstitutional, he does not provide legal authority to support his position or adequately develop a constitutional argument apart from his statutory argument that the date of adjudication should be used as the date of conviction. We therefore do not address any constitutional issue in this opinion. See *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (We need not consider arguments which are undeveloped or unsupported by references to relevant legal authority.).

Streff's own admissions at the plea hearing to establish that the prior judgment of conviction was entered on April 13, 1995, that Streff was incarcerated pursuant to that conviction until May 2, 1996, and spent an additional eighty-three days in custody on parole violations, and that the current offense was committed on July 22, 2001.

¶6 Under WIS. STAT. § 990.01(49), a “year” means “a calendar year, unless otherwise expressed.” Therefore, contrary to Streff's contention, the relevant five-year period extended from May 2, 1996 to May 2, 2001, regardless of the fact that one of those years was a leap year. Adding an additional eighty-three days for time served in relation to parole revocations extended the time period to July 24, 2001. Because Streff committed the current offense two days before this time period expired, he was properly sentenced as a repeat offender.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

