COURT OF APPEALS
DECISION
DATED AND FILED

March 25, 2004

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. 03-1378-CR

Cir. Ct. No. 02CT002485

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

WILLIAM A. BROWN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County: C. WILLIAM FOUST, Judge. *Affirmed*.

¶1 DYKMAN, J.[1] William A. Brown appeals from a judgment of conviction for operating a motor vehicle while intoxicated (OMVWI). Brown

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2001-02). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

contends the circuit court erred in concluding under WIS. STAT. § 346.65(2)(d) that this was his fourth offense. He argues that the trial court should have convicted him under § 346.65(2)(b) as a second offense, because although he had three prior OMVWI offenses when he committed the offense in question, only one of them falls within a ten-year period under § 346.65(2)(b). We affirm.

¶2 The parties do not dispute the facts. In September 2002, the State charged Brown with OMVWI as a fourth offense. Brown admitted that he was driving while intoxicated and that he had three prior OMVWI convictions. The trial court adjudged Brown guilty of an OMVWI offense and sentenced him under WIS. STAT. § 346.65(2)(d) to nine months in jail. It revoked his driver's license for thirty-six months, fined him $1,000 plus costs, and imposed a mandatory alcohol assessment.

¶3 Brown contends that WIS. STAT. § 346.65(2)(b), rather than § 346.65(2)(d), applies to him because only one of his three prior convictions falls within a ten-year period.[2] He reasons that these unambiguous paragraphs of the statute conflict because they subject him to different penalties. He further contends that the rule of lenity requires us to apply the milder penalty since we cannot harmonize the paragraphs. He also asserts that para. (b) controls because it is a specific statute, whereas para. (d) is a general statute.

¶4 Brown's appeal requires us to construe WIS. STAT. § 346.65 and raises a question of law, which we review de novo. ***State v. Delaney***, 2003 WI 9, ¶12, 259 Wis. 2d 77, 658 N.W.2d 416.

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[2] The maximum penalty provided by WIS. STAT. § 346.65(2)(b) is six months in jail, a fine of $1,100, drivers license revocation, and a mandatory alcohol assessment.

¶5 The purpose of statutory construction is to determine and to give effect to legislative intent, which we ascertain first by the language of the statute. ***Id***., ¶13. We do not read related sections of a statute in isolation, but rather together, to determine their meaning. ***J.L.W. v. Waukesha County***, 143 Wis. 2d 126, 130, 420 N.W.2d 398 (Ct. App. 1988). When construing multiple sections of a statute *in pari materia*, we seek to harmonize them, as we do not favor conflicts between sections of a statute. ***Delaney***, 259 Wis. 2d 77, ¶13. We will not resort to other construction aids, such as legislative history, scope, context, and subject matter, unless statutory language is ambiguous. ***Id.*** "A statute is ambiguous if reasonable persons could disagree as to its meaning." ***Id***. Even an unambiguous and clear statute may produce an absurd result or a result clearly at odds with the legislative intent; we then may give effect to an alternative meaning of the words. ***State v. Jennings***, 2003 WI 10, ¶11, 259 Wis. 2d 523, 657 N.W.2d 393 (citation omitted).

¶6 Reading WIS. STAT. § 346.65(2) in its entirety, we note that all the paragraphs differentiate penalties based on the number of prior offenses. ***J.L.W.***, 143 Wis. 2d at 130. Paragraph (d) applies to Brown, because including the conviction in question, he has four prior convictions. But para. (b), by its plain language, also applies.

¶7 We have recognized that OMVWI penalties gradually increase with the number of offenses so as to punish those "who fail to learn to respect the law after suffering the initial penalties and embarrassment of conviction." ***State v. Banks***, 105 Wis. 2d 32, 49, 313 N.W.2d 67 (1981).

¶8 Despite the ambiguity caused by two applicable statutes, the sentencing structure in WIS. STAT. § 346.65(2) convinces us that para. (d)

controls. The legislature intended that second and subsequent offenses be subject to increased penalties. ***State v. Skibinski***, 2001 WI App 109, ¶13, 244 Wis. 2d 229, 629 N.W.2d 12. The purpose of § 346.65(2)(b) is to treat second offenders as if they were first offenders if their first conviction occurred more than ten years prior to their second conviction. A second offender is thus shown some leniency if ten years have elapsed between his or her first and second convictions. But the sentencing structure of § 346.65(2) provides no such leniency when an offender has accumulated three or more convictions in the person's lifetime.

¶9 It would be unreasonable to exclude some of Brown's prior convictions when the record shows this was his fourth conviction, even though his first and second convictions were more than ten years ago. Such a result would be incongruous with other multiple OMVWI offenders' punishments. Those offenders are punished by the increasing penalties of (b) through (e). So is Brown.

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports. *See* WIS. STAT. RULE 809.23(1)(b)4.