

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 12, 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. 03-2980-CR
STATE OF WISCONSIN**

Cir. Ct. No. 02CT000511

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

ROLANDO BALLI,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Kenosha County:
S. MICHAEL WILK, Judge. *Affirmed.*

Before Anderson, P.J., Brown and Nettesheim, JJ.

¶1 ANDERSON, P.J. Rolando Balli was granted leave to appeal the circuit court's order that the State could count his two prior Illinois drunk driving offenses even after he successfully completed court-ordered supervision. We agree with the circuit court that Balli's pending charges are to be treated as his third offense.

¶2 When Balli was charged with drunk driving in Kenosha county on June 10, 2002, he had two prior arrests for drunk driving in Illinois. In both instances, he either entered a plea of guilty, stipulated to facts supporting a finding of guilt, or was found guilty, and was then placed on court supervision, which he successfully completed.

¶3 After originally charging Balli with operating while intoxicated (OWI), third offense, WIS. STAT. §§ 346.63(1)(a) and 346.65(2) (2003-04),¹ and operating with a prohibited alcohol concentration, third offense, WIS. STAT. §§ 346.63(1)(b), 346.65(2) and 340.01(46m), the State and Balli stipulated to a dismissal of the charges and to issuance of an amended complaint, alleging the charge of first offense OWI. Shortly after entering into the stipulation, the State moved to reinstate the original charges on the grounds that they “were erroneously amended based on an incomplete and incorrect understanding of Illinois law.”

¶4 The issue was briefed and argued by the parties. In an oral ruling, the circuit court granted the State’s motion and then denied Balli’s oral motion to dismiss the criminal complaint. Balli sought leave to appeal, which we granted.

¶5 Balli frames the question on appeal as “[w]hether the State of Wisconsin can charge a defendant with an OWI-3rd Offense and Operating a Motor Vehicle With a Prohibited BAC-3rd Offense, where a defendant successfully completed supervision for two prior drunk driving offenses in the State of Illinois.” In *State v. List*, 2004 WI App 230, ¶10, No. 03-3149-CR, we affirmatively answered the same question. Because officially published opinions

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

of the court of appeals have statewide precedential effect, *Cook v. Cook*, 208 Wis. 2d 166, 186, 560 N.W.2d 246 (1997), and we are not at liberty to overrule, modify or withdraw language from a published opinion, *id.* at 190, we will apply *List* to the facts of this case and affirm.

By the Court.—Order affirmed.

Not recommended for publication in the official reports.

