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DISTRICT III

October 4, 2016

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You are hereby notified that the Court has entered the following opinion and order:

2015AP2110-CR State v. Jessie J. Holmes
2015AP2111-CR (L. C. Nos. 2006CM1240, 2006CM2434, 2007CM406)
2015AP2112-CR

Before Stark, P.J.¹

Jessie Holmes appeals a judgment of conviction and order denying his postconviction motion to vacate repeater penalty enhancers pursuant to WIS. STAT. § 973.13. Holmes contends he was improperly convicted and sentenced as a repeater because he did not admit, and the State failed to prove, repeater status. The circuit court determined Holmes had admitted his repeater

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

status at the time of his pleas, and, therefore, could not dispute his repeater convictions and the resulting sentences. Based upon our review of the briefs and record, we conclude that this case is appropriate for summary disposition and affirm. *See* WIS. STAT. RULE 809.21.

Holmes pled no contest to eight misdemeanors, all with repeater enhancers as part of a global resolution of three separate cases.² In Marathon County Case Nos. 2006CM1240 and 2006CM2434, the circuit court withheld sentence and placed Holmes on four years probation. In Marathon County Case No. 2007CM406, Holmes was sentenced to two years of initial confinement and six months of extended supervision, on each of three misdemeanor counts, consecutive to each other. That sentence was stayed, and Holmes was placed on four years' probation.

Holmes was subsequently revoked from probation in all cases. The circuit court sentenced Holmes to one year of initial confinement followed by one year extended supervision, consecutive, on each of the three misdemeanor counts in 2006CM1240. The circuit court sentenced Holmes to one year of initial confinement and one year of extended supervision on the two misdemeanor counts in 2006CM2434, concurrent to each other and the sentences imposed in 2006CM1240 and 2007CM406.

The circuit court subsequently denied a postconviction motion filed by Holmes pursuant to WIS. STAT. § 973.13 to vacate the penalty enhancers on the sentences imposed in all three cases. The circuit court, relying upon *State v. Schierricks*, 153 Wis. 2d 510, 518, 451 N.W.2d

² All three cases have been consolidated into a single appeal.

759 (Ct. App. 1989), determined Holmes was unable to seek relief from the repeater enhancers because Holmes approved of his enhanced sentences.

Under WIS. STAT. § 973.12(1), a defendant may be sentenced as a repeater if he or she admits the prior convictions alleged or if the State proves the prior convictions. *State v. Liebnitz*, 231 Wis. 2d 272, 286, 603 N.W.2d 208 (1999). Holmes argues he was improperly sentenced as a repeater because he did not admit to the repeater enhancers, and the State failed to prove beyond a reasonable doubt the prior convictions alleged to provide a basis for the repeater enhancers. As a result, he contends we must overlook any other defects to this appeal to reduce the penalties imposed to twenty-one months initial confinement with no extended supervision.

To afford meaningful review of Holmes's appellate arguments and determine if he admitted his repeater status, we require a certified copy of the plea hearing transcript. An appellant is responsible for ensuring the record is sufficient for our review. See *Fiumefreddo v. McLean*, 174 Wis. 2d 10, 26–27, 496 N.W.2d 226 (Ct. App. 1993). If an appellant does not provide us with a transcript, we must presume every fact necessary to sustain the circuit court's decision. *Suburban State Bank v. Squires*, 145 Wis. 2d 445, 451, 427 N.W.2d 393 (Ct. App. 1988).

Holmes acknowledges a certified transcript is not included in the record but claims that one is unnecessary for the prosecution of this appeal. However, under WIS. STAT. RULE 809.11(4)(a), Holmes was required to request and file a transcript of his plea hearing. Instead, Holmes merely attached a document labeled "Exhibit D," unaccompanied by an affidavit, to his postconviction motion. In addition, Holmes failed to serve copies of any transcript on counsel for the State as required under RULE 809.11(4)(b).

We cannot ascertain whether the exhibit, otherwise unsupported by an affidavit in contravention of WIS. STAT. § 909.015(1), is an accurate copy of the proceedings, and we thus cannot rely upon it. Because Holmes has not provided us with an official copy of the transcript, we must presume the factual basis from which the circuit court made its decision is correct, namely that Holmes properly admitted repeater status at his plea and sentencing hearing. *See Squires*, 145 Wis. 2d at 451. We reject Holmes's claim that his failure to ensure the record contained a certified transcript from the plea hearing is a simple procedural defect.

Therefore,

IT IS ORDERED that the court's order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals