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DISTRICT IV

January 31, 2019

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

2018AP128-CR State of Wisconsin v. Troy C. Hanson (L.C. # 2016CF594)

Before Lundsten, P.J., Kloppenburg and Fitzpatrick, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Troy Hanson appeals a judgment of conviction for attempting to flee or elude a traffic officer, as a repeater, and an order denying his motion for postconviction relief. *See* WIS. STAT. §§ 346.04(3), 939.62(1) (2015-16).[1] Hanson argues that the portion of his sentence attributable to the repeater enhancement should be vacated because the State failed to prove his repeater

[1] All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

status and because Hanson did not admit that he was a repeater. Based upon our review of the briefs and the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We summarily affirm.

Hanson pled guilty to one count of attempting to flee or elude a traffic officer, as a repeater. Three misdemeanor counts were dismissed and read in pursuant to the plea agreement. Hanson was sentenced to three years and six months of initial confinement and two years of extended supervision. In imposing the sentence, the circuit court made use of the repeater enhancement. Without it, the maximum penalty for fleeing or eluding an officer, a Class I felony, is one year and six months of initial confinement and two years of extended supervision. WIS. STAT. §§ 346.17(3)(a), 973.01(2)(b)9. and (d)6.

Hanson filed a postconviction motion challenging the repeater portion of his sentence. The circuit court denied the motion after a hearing, and this appeal follows. According to Hanson, the sole issue presented on appeal is whether the requirements of WIS. STAT. § 973.12 were satisfied. Application of that statute to undisputed facts presents a question of law that we review de novo. ***State v. Liebnitz***, 231 Wis. 2d 272, 283, 603 N.W.2d 208 (1999).

Under WIS. STAT. § 973.12(1), a defendant shall be subject to sentencing under the repeater enhancement statute, WIS. STAT. § 939.62, if "the prior convictions are admitted by the defendant or proved by the state[.]" Hanson asserts that he did not admit that he was a repeater and that the State did not prove his repeater status. He argues that, therefore, the portion of his sentence attributable to the repeater enhancement should be vacated.

The State counters with two arguments. First, the State argues that the presentence investigation report (PSI) established proof of Hanson's status as a repeat offender, citing ***State***

v. Caldwell, 154 Wis. 2d 683, 694, 454 N.W.2d 13 (Ct. App. 1990).[2] Second, the State asserts that Hanson personally admitted his repeater status when he pled guilty, relying on ***State v. Rachwal***, 159 Wis. 2d 494, 465 N.W.2d 490 (1991).

We agree with the State that ***Rachwal*** controls the outcome in this case and, therefore, we need not address the issue of whether the PSI qualified as proof of Hanson's repeater status. *See* ***Sweet v. Berge***, 113 Wis. 2d 61, 67, 334 N.W.2d 559 (Ct. App. 1983) (we need not address all issues when deciding case on other grounds).

In ***Rachwal***, the defendant pled no contest to a misdemeanor that was charged as a repeater. 159 Wis. 2d at 502-03. The circuit court fully utilized the repeater enhancement in imposing sentence, and the defendant challenged his sentence. ***Id.*** at 505. The supreme court upheld the sentence, stating:

> We conclude that, under the circumstances of this case, a plea of guilty or no contest to a criminal complaint containing a "repeater provision" alleging a prior conviction constitutes, under sec. 973.12, Stats., an admission by the defendant of such prior conviction so that the state need not prove such prior conviction for purposes of sentence enhancement according to sec. 939.62.

Id. at 512-13.

In ***Rachwal***, the criminal complaint explicitly stated that the provisions of WIS. STAT. § 939.62(1) were being invoked, stated the dates and nature of the prior convictions, and

[2] In ***State v. Caldwell***, 154 Wis. 2d 683, 694, 454 N.W.2d 13 (Ct. App. 1990), this court held that the State proved the defendant's repeater status by virtue of the PSI, where: (1) the repeater allegation was expressly contemplated by the investigating probation and parole agent; (2) the date of the relevant prior conviction was included in the PSI; and (3) the agent independently verified the prior conviction from sources other than the complaint. The State argues that all three of the ***Caldwell*** criteria are satisfied in this case. Hanson disagrees, asserting that the first and third requirements of ***Caldwell*** are not met.

specified the range of increased penalties that could be imposed as a result of the repeater enhancement. ***Id.*** at 501. At the plea hearing, an exchange between the circuit court and the defendant in ***Rachwal*** regarding the repeater enhancement went as follows:

> It is charged as a misdemeanor which means that for the offense alone there would be normally up to a nine-month jail sentence and a $10,000 fine or both. But the complaint and charge against you includes allegations that you have previously been convicted sufficiently so that this would be considered a repeater type of an offense which would increase the penalties up to a maximum of zero to three years in prison, from no fine but up to $10,000 in fine or both. Those are the possible penalties that you would face if you would enter a plea to this charge. Do you understand that?
>
> The defendant answered, "Yes."

Id. at 502-03.

It was undisputed in ***Rachwal*** that the State offered no proof of any prior conviction of the defendant. ***Id.*** at 504. Nonetheless, the supreme court concluded that, for purposes of WIS. STAT. § 973.12, the defendant's plea of no contest constituted an affirmative admission by the defendant of all the facts alleged in the complaint, including those pertaining to the prior convictions. ***Id.*** at 512. The court reasoned that its conclusion was consistent with that of numerous other jurisdictions "that clearly hold that what is admitted by a guilty or no contest plea is all the material facts alleged in the charging document." ***Id.*** at 509.

In ***Rachwal***, the supreme court discussed the following facts as pertinent to its decision:

> The trial judge expressly drew the defendant's attention to the repeater nature of the charge and to the fact that the possible penalties the defendant was facing might be enhanced, pursuant to the repeater statute, as a result of the defendant's being found guilty pursuant to his no contest plea. After informing the defendant of his constitutional rights and repeatedly questioning him so as to ascertain that he was submitting his plea freely, voluntarily and intelligently, the trial judge accepted the

> defendant's unequivocal affirmative answer as to his understanding of his situation. In this light, the colloquy into the defendant's understanding of the meaning of the allegations he was facing can be said to have produced a direct and specific admission.

Id.

Hanson concedes that a guilty or no contest plea may constitute an implied admission to repeater status, depending on the circumstances. The same material circumstances present in ***Rachwal*** also are present in this case. In this case, as in ***Rachwal***, the complaint specifically alleged that the provisions of WIS. STAT. § 939.62(1) were being invoked, stated the dates and nature of Hanson's prior convictions, and stated the range of increased penalties that could be imposed as a result of the repeater enhancement.

During the plea colloquy, the circuit court drew Hanson's attention multiple times to the repeater nature of the charge to which he was pleading. The court confirmed that Hanson understood that the possible penalties he was facing might be enhanced by not more than four years as a result of the repeater enhancer, exposing him to a potential maximum sentence of seven and one-half years. The court also ascertained on the record that Hanson understood the constitutional rights he was waiving by entering his plea, and that Hanson was entering the plea knowingly, voluntarily, and fully informed. When it came time to enter a plea, the court stated:

> I will ask you as to Count I, in the criminal complaint, attempting to flee or allude a traffic officer as a repeater that's alleged to have occurred on Thursday, August 11th, 2016, in the city and county of La Crosse, what is your plea to attempting to flee or allude a traffic officer as a repeater?

Hanson answered unequivocally, "Guilty, your Honor."

Hanson's attempts to distinguish the facts of this case from those in ***Rachwal*** are not persuasive. In ***Rachwal***, under analogous circumstances, the supreme court held that the defendant's guilty plea was sufficient to constitute an admission of repeater status under WIS. STAT. § 973.12. The circumstances in ***Rachwal*** may have approached the "bare minimum necessary for a valid admission," but the supreme court nonetheless found those circumstances sufficient. ***Id.*** at 513. We conclude that the analogous circumstances of this case also are sufficient to establish that Hanson admitted to his repeater status.

IT IS ORDERED that the judgment and order are summarily affirmed under WIS. STAT. RULE 809.21(1).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals