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**DISTRICT III**

July 12, 2022

To:

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Brown County Courthouse  
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Robert J. Beyersdorf 84575  
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P.O. Box 3310  
Oshkosh, WI 54903-3310

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

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2021AP10

State of Wisconsin v. Robert J. Beyersdorf  
(L. C. No. 2012CF413)

Before Stark, P.J., Hruz and Gill, 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).**

Robert Beyersdorf appeals from an order denying his postconviction motion to vacate what he alleges to be excessive sentences on two felonies and one misdemeanor.<sup>1</sup> Beyersdorf contends his sentences are excessive because the State failed to adequately prove repeater

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<sup>1</sup> By order dated December 27, 2021, we held that Beyersdorf's excessive sentence claim is not procedurally barred by a prior direct appeal of his convictions. See *State v. Flowers*, 221 Wis. 2d 20, 586 N.W.2d 175 (Ct. App. 1998).

allegations that were used as penalty enhancers pursuant to WIS. STAT. § 939.62(1) (2019-20).<sup>2</sup> Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We affirm.

The State charged Beyersdorf in Brown County case No. 2012CF413 with five offenses related to the burglary of a farmhouse in May 2011. The complaint included an allegation for each count that Beyersdorf was a repeat offender based upon his prior convictions in March 2005 on several counts in Marathon County case No. 2004CF972. Beyersdorf eventually entered no-contest pleas to three of the charges in the Brown County case.

At the plea hearing, the circuit court noted that the State was seeking to apply repeater penalty enhancers to each of the charges based upon the convictions in Marathon County case No. 2004CF972 and correctly informed Beyersdorf about the potential enhanced penalties he faced. The court explicitly asked Beyersdorf whether he remembered the Marathon County case, whether he had been sentenced to five years' initial confinement and five years' extended supervision in that case, and whether he acknowledged that the information in the criminal complaint was factually correct. Beyersdorf told the court that he remembered the Marathon County case, and Beyersdorf's attorney stipulated that the facts in the complaint were accurate. Beyersdorf also acknowledged having read the complaint and provided the court with a signed plea questionnaire that correctly set forth the enhanced penalties for the charges.

The presentence investigation report (PSI) likewise listed the Marathon County convictions and sentences, and it noted that Beyersdorf did not dispute any of his convictions or

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<sup>2</sup> All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

his corrections record. Beyersdorf did not challenge the accuracy of the information in the PSI about his Marathon County convictions when he was afforded an opportunity to comment on and correct the PSI at sentencing.

The circuit court ultimately imposed sentences on Beyersdorf that utilized the penalty enhancers for repeat offenders. In a postconviction motion, and now on appeal, Beyersdorf challenges the factual basis for determining that he was a repeat offender under WIS. STAT. § 939.62. Specifically, he contends that the court did not ask him for the dates of his prior incarceration, and he did not admit that his new convictions occurred within five years of his prior convictions or incarceration.

A defendant is a “repeat offender” for purposes of the penalty enhancement statute if he or she “was convicted of a felony during the 5-year period immediately preceding the commission of the crime for which the [defendant] presently is being sentenced” or “was convicted of a misdemeanor on 3 separate occasions during that same period.” WIS. STAT. § 939.62(2). Time spent in actual confinement in serving a criminal sentence is excluded from the calculation of the five-year lookback period. *Id.* The application of the repeat offender statute to an undisputed set of facts presents a question of law subject to de novo review. *State v. Reitter*, 227 Wis. 2d 213, 223, 595 N.W.2d 646 (1999).

A repeat offender is subject to an enhanced sentence when “the prior convictions are admitted by the defendant or proved by the state.” WIS. STAT. § 973.12(1). A defendant’s plea of guilty or no contest may be deemed to constitute an admission to a repeater allegation when the “totality of the record” shows that the defendant understood the nature and consequences of

the repeater allegations and acknowledged a factual basis for them. *State v. Liebnitz*, 231 Wis. 2d 272, 285-88, 603 N.W.2d 208 (1999).

Just as in *Liebnitz*, the totality of the record here shows that Beyersdorf understood the factual basis, nature and consequences of the repeater allegations against him. The complaint and Information charged Beyersdorf as a repeat offender, and the complaint set forth in detail the nature and dates of Beyersdorf's prior Marathon County convictions and his sentences on those convictions. In addition, the complaint, Information, plea questionnaire and circuit court colloquy all specified the additional punishment that Beyersdorf faced as a result of the repeater allegations. Beyersdorf also acknowledged his understanding of the increased penalties on the record and did not dispute the accuracy of the complaint. In addition, Beyersdorf's acknowledgement that he served five years' initial incarceration on his March 2005 convictions plainly demonstrates that his crimes in the present case fell well within the five-year lookback period, without more specific dates being necessary. We conclude, as did the circuit court, that Beyersdorf's pleas constituted an admission to the repeater allegations and provided an adequate basis for the imposition of enhanced penalties under WIS. STAT. § 939.62.

Upon the foregoing,

IT IS ORDERED that the order is summarily affirmed. WIS. STAT. RULE 809.21.

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

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*