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DISTRICT IV

March 11, 2013

To:

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

2011AP2732-CR State of Wisconsin v. Patrick L. Hawkinson (L.C. #2010CF208)

Before Lundsten, P.J., Sherman and Blanchard, JJ.

Patrick Hawkinson appeals a judgment of conviction for operating a motor vehicle under the influence of an intoxicant, fifth offense. 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 (20011-12).¹ We affirm.

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

Hawkinson contends that the circuit court erred in denying his pre-trial motion seeking an order requiring the State to prove, before the jury and beyond a reasonable doubt, all elements of his first-offense OWI conviction, which was a civil forfeiture in Wisconsin. Hawkinson argues that WIS. STAT. § 343.307(1), which describes what convictions must be counted when determining an OWI penalty, is unconstitutional as applied to him because it required the circuit court to count a civil conviction obtained without the guarantees of a jury trial or criminal burden of proof. He argues that under *Apprendi v. New Jersey*, 530 U.S. 466 (2000), a prior conviction, in order to be used to enhance a penalty, must be based on a judgment from a proceeding in which the defendant had a right to a jury trial and the State bore the burden of proof beyond a reasonable doubt. Our decision is controlled by *State v. Verhagen*, 2013 WI App 16, wherein we rejected arguments identical to those raised by Hawkinson. Accordingly, we summarily affirm.

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

Diane M. Fremgen
Clerk of Court of Appeals