**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

November 19, 1998

**Marilyn L. Graves**
**Clerk, Court of Appeals**
**of Wisconsin**



**No. 98-1395-CR**

**STATE OF WISCONSIN** **IN COURT OF APPEALS**
**DISTRICT IV**

---

**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**NATHAN O. JONES,**

**DEFENDANT-APPELLANT.**

---

APPEAL from a judgment and an order of the circuit court for Rock County: MICHAEL J. BYRON, Judge. *Affirmed.*

Before Eich, Roggensack and Deininger, JJ.

PER CURIAM. Nathan Jones appeals his judgment of conviction for receiving stolen property and the order denying him postconviction relief. He claims that the circuit court lacked a sufficient factual basis to accept his guilty plea at the level of the offense charged. After reviewing the record, we disagree and affirm.

## BACKGROUND

Approximately $7,350 worth of tools and automotive parts were stolen from a storage shed on August 28 or 29, 1995. After Jones admitted to the police that his son had brought him a large number of tools to sell, most of the victim's tools were recovered from Jones's possession. Based upon these facts, the complaint and information charged that Jones had received stolen tools and automotive parts valued in excess of $2,500.

Jones signed a plea questionnaire in which he admitted that the allegations in the complaint were substantially true and could be used by the trial court as a factual basis for accepting his plea. The State offered the probable cause portion of the complaint as a factual basis for the charge at the plea hearing, and the trial court found that a sufficient factual basis for the plea had been established.

After receiving an indeterminate term of three years in prison, Jones moved to reduce his conviction from a Class C felony to a Class A misdemeanor, on the grounds that the complaint did not adequately establish the value of the property which he had actually received, as distinct from the total amount of property stolen. The circuit court denied the motion and Jones appeals.

## STANDARD OF REVIEW

Section 971.08(1)(b), STATS., requires the trial court to "[m]ake such inquiry as satisfies it that the defendant in fact committed the crime charged" before accepting a guilty plea. This provision is designed "to protect the defendant who pleads guilty voluntarily and understanding the charge brought but not realizing that his conduct does not actually fall within the statutory definition

of the charge." ***State v. Mendez***, 157 Wis.2d 289, 294, 459 N.W.2d 578, 580 (Ct. App. 1990) (citations omitted). In order to satisfy its obligation to determine that a factual basis for the plea exists, the trial court may consider hearsay evidence, such as testimony of police officers, the preliminary examination record and other records in the case. *See* ***Morones v. State***, 61 Wis.2d 544, 552-53, 213 N.W.2d 31, 36 (1973). The determination of whether a factual basis exists lies within the discretion of the trial court, and should not be disturbed on appeal unless clearly erroneous. *See* ***State ex rel. Warren v. Schwarz***, 219 Wis.2d 616, 646, 579 N.W.2d 698, 712 (1998).

## ANALYSIS

A person who intentionally receives stolen property is guilty of a Class A misdemeanor if the property is worth less than $1,000, but a Class C felony if the property is worth more than $2,500. Absent a factual basis for a valuation affecting the classification of a property offense, the offense should be reduced to a level which does not require a particular valuation. *See* ***State v. Harrington***, 181 Wis.2d 985, 512 N.W.2d 261 (Ct. App. 1994).

Jones correctly points out that the complaint failed to break down the total value of the stolen property into the amount attributable to the tools and the amount attributable to the automotive parts. He claims that this omission, combined with the fact that he had admitted receipt of only the tools to the police, and not the automotive parts, deprived the trial court of sufficient facts from which to value the property which he had received. However, Jones's focus on the fact that he had admitted only receipt of the tools in his statement to police ignores the fact that he later also admitted that the facts in the complaint were substantially true in his signed plea questionnaire. The facts in the complaint included the

charge that Jones had received "automotive parts and tools, with a value exceeding $2,500."

Therefore, this is not a situation where the defendant might not have realized that his conduct did not actually fall within the statutory definition of the charge. Jones was clearly on notice that the value of the property received was an element of the offense, and he admitted that he had received property valued in excess of the statutory amount for a Class C felony. In this context, given that $7,300 worth of tools and automotive parts were stolen, and that Jones admitted in the plea questionnaire to receiving both tools and automotive parts, it was not unreasonable for the trial court to infer that Jones had received stolen property worth more than $2,500. The trial court's conclusion that a factual basis existed for the felony plea was not clearly erroneous.

Contrary to Jones's assertions, our conclusion does not conflict with either ***White v. State***, 85 Wis.2d 485, 271 N.W.2d 97 (1978), or ***State v. Harrington***, 181 Wis.2d 985, 512 N.W.2d 261 (Ct. App. 1994). In ***White***, the defendant pleaded guilty to felony theft of a chain saw. Although the complaint and information in that case charged that the stolen saw was worth $150,[1] preliminary hearing testimony indicated that the saw had at some point been sold for $40. Here, there was no preliminary hearing, and no such conflicting evidence before the trial court. Furthermore, the prosecutor's testimony in ***White***, which was offered to supply a factual basis for the plea, made no mention of the saw's value, whereas the complaint which was offered as a factual basis here did set forth a specific value for the stolen items. ***Harrington*** is similarly distinguishable

[1] At that time, theft constituted a felony if the value of the property was more than $100. Section 943.20(3), STATS., (1975-76).

in that, although the complaint in that case alleged felony theft, the probable cause portion of the complaint made no reference to the value of the property taken.

*By the Court.*—Judgment and order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.