COURT OF APPEALS
DECISION
DATED AND FILED

August 6, 2002

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 02-0661-CR **Cir. Ct. No. 01CM1137**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ALEXANDER STOCKS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: JOHN SIEFERT, Judge. *Affirmed.*

¶1 CURLEY, J.[1] Alexander Stocks appeals from the judgment of conviction entered after a jury convicted him of retail theft – habitual criminality, contrary to WIS. STAT. §§ 943.50(1m)(b) and 939.62 (1999-2000).[2] He also

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2).

[2] All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

appeals from the trial court's order denying his motion for postconviction relief. Stocks contends that the trial court was precluded from imposing an enhanced sentence because it failed to make a specific finding that he was a repeat offender pursuant to WIS. STAT. § 939.62. Because the prior convictions were adequately proven by the State and any alleged error was harmless, this court affirms.

I. BACKGROUND.

¶2 On February 6, 2001, police officers were dispatched to The Gap store at the Bayshore Mall. An assistant manager of the store informed the officers that she had observed Stocks take a bottle of "The Gap Eau De Toilette" from a shelf, place it in a black plastic bag, and exit the store without paying. Mall security stopped Stocks after he had exited the store. The security officers discovered four bottles of the Eau De Toilette in Stocks' bag, totaling $100 in merchandise.

¶3 On February 7, 2001, the State filed a complaint charging Stocks with misdemeanor retail theft as a habitual criminal. In order to establish the enhanced charge of habitual criminality, the State attached certified copies of the docket entries and judgment of conviction entered on June 2, 1999 for Stocks' prior felony conviction for escape. After a jury convicted Stocks on the retail theft charge, the trial court imposed a three-year term of imprisonment, employing the full penalty enhancement pursuant to WIS. STAT. § 939.62(1)(a).

II. ANALYSIS.

¶4 WISCONSIN STAT. § 939.62(2) provides that a defendant is a repeater if he or she "was convicted of a felony during the 5-year period immediately preceding the commission of the crime for which the actor presently is being

sentenced." Accordingly, the trial court was empowered to increase the maximum term of imprisonment from nine months to a term not to exceed three years. *See* WIS. STAT. § 939.62(1)(a). However, under WIS. STAT. § 973.12(1), a defendant may be sentenced as a repeater under § 939.62 only "[i]f the prior convictions are admitted by the defendant or proved by the state."

¶5 First, Stocks claims that the State failed to properly prove the prior conviction. This court disagrees. An official report of a government agency, including a certified judgment of conviction showing the date of the defendant's prior conviction, is prima facie evidence of any conviction or sentence reported therein for purposes of repeat offender sentence enhancement. *See* ***State v. Flowers***, 221 Wis. 2d 20, 31-32, 586 N.W.2d 175 (Ct. App. 1998) ("A certified judgment of conviction is the best evidence we can conceive of to show a trial court the existence of a prior felony conviction."). Therefore, in the instant case, the State satisfied WIS. STAT. §§ 939.62 and 973.12(1) by attaching to the complaint a certified judgment of conviction showing that defendant had been convicted of a felony less than two years before commission of the instant offense.

¶6 Stocks also contends that the trial court erred by failing to make a specific finding at sentencing that he was a repeater pursuant to WIS. STAT. § 939.62. In support of his argument, Stocks cites the following language from ***State v. Harris***, 119 Wis. 2d 612, 350 N.W.2d 633 (1984):

> If the trial court in its discretion determines that incarceration is warranted for the defendant which is greater than that prescribed by law for the substantive offense, it is incumbent, prior to an imposition of a sentence in excess of the maximum, that the court make a finding that the defendant is a repeater, which authorizes it to increase the sentence pursuant to sec. 939.62(1), Stats. Only when greater than the maximum sentence prescribed by law is imposed upon the defendant can the repeater statute be applicable, and only then is the issue of whether

> the defendant is a "repeater," as defined by sec. 939.62(2), relevant.

Id. at 619-20.

¶7 Here, the trial court imposed the maximum sentence of three years only after the State meticulously outlined Stocks' past criminal history, including the felony escape conviction in April of 1999 – the basis for his repeater status. While the trial court never specifically noted the prior conviction, it is clear from this court's review of the record that such a finding was implicit. The State adequately proved the underlying conviction and the trial court properly considered the prior felony conviction in sentencing. Contrary to Stocks' assertion, ***Harris*** cannot be read as requiring the trial court to follow a script in imposing sentence. *See* ***State v. Echols***, 175 Wis. 2d 653, 672, 499 N.W.2d 631 (1993) ("A trial court is not required to recite 'magic words' to set forth its findings of fact."); ***Michael A.P. v. Solsrud,*** 178 Wis. 2d 137, 151, 502 N.W.2d 918 (Ct. App. 1993) ("[T]he trial court's failure to use the 'magic words' does not amount to reversible error."); ***Creighbaum v. State***, 35 Wis. 2d 17, 28-29, 150 N.W.2d 494 (1967) ("And it would clearly be a triumph of form over substance were this court to hold that a reversal as a matter of law was compelled because 'all elements of a formula' were not precisely followed.").

¶8 Finally, even if the trial court erred in failing to make a specific finding, any such error is harmless because the prior conviction was proven by the State.[3] Based upon the foregoing reasons, the decision of the trial court is affirmed.

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[3] WISCONSIN STAT. § 805.18(2) states:

(continued)

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

No judgment shall be reversed or set aside or new trial granted in any action or proceeding on the ground of selection or misdirection of the jury, or the improper admission of evidence, or for error as to any matter of pleading or procedure, unless in the opinion of the court to which the application is made, after an examination of the entire action or proceeding, it shall appear that the error complained of has affected the substantial rights of the party seeking to reverse or set aside the judgment, or to secure a new trial.