COURT OF APPEALS
DECISION
DATED AND FILED

November 20, 2003

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 03-0524 **Cir. Ct. No. 93CF000131**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

WILLIAM MEDINA,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Columbia County: DANIEL S. GEORGE, Judge. *Affirmed.*

Before Vergeront, Lundsten and Higginbotham, JJ.

¶1 PER CURIAM. William Medina appeals an order that denied his postconviction motion to vacate his sentence. He contends, for several reasons, that a penalty enhancer was improperly applied and that his sentence should not have been imposed consecutive to a life sentence he was already serving. We note at the outset that Medina has already had a direct appeal from his conviction, and

that he did not provide the trial court or this court with any adequate reason why he could not have raised the present issues during his prior proceedings. Therefore, it appears that his current claims are procedurally barred. *See* WIS. STAT. § 974.06(4) (2001-02)[1] and ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 185-86, 517 N.W.2d 157 (1994). Because the State has not argued waiver, however, we will briefly explain why we consider each of Medina's claims to be without merit.

¶2 Medina was charged as a repeat offender with attempted first-degree intentional homicide by use of a dangerous weapon. He was convicted as a repeat offender of second-degree recklessly endangering safety by use of a dangerous weapon. He first asserts that the repeater enhancer could not properly be applied to his conviction on the lesser-included offense because the penalty range of the repeater enhancer for the endangering safety offense was different than that for the original attempted homicide charge of which he was given notice in the information. *Cf.* WIS. STAT. § 939.62(1)(b) (penalty for crime punishable by one to ten years could be increased by six years if the prior conviction was for a felony) *with* § 939.62(1)(c) (penalty for crime punishable by ten years or more could be increased by ten years if prior conviction was for a felony). It is also true, however, that the penalty for second-degree recklessly endangering safety was by itself different than that for attempted first-degree intentional homicide. *Cf.* WIS. STAT. §§ 941.30(2) and 939.50(3)(e) *with* §§ 940.01(1), 939.32(1)(a), and 939.50(3)(b). That fact does not render insufficient the notice that the information gave as to the maximum possible penalty on the charged offense. In short, Medina

[1] All other references in this opinion are to the 1991-92 version of the Wisconsin Statutes, which were in effect at the time the offense was committed.

cannot complain that he received insufficient notice that his sentence could be increased by up to six years as a repeater when he was put on notice that, if he had been convicted of the original charge, his sentence could be increased by up to ten years as a repeater.

¶3 Medina's second contention is that the trial court could not apply the repeater enhancement because it did not first impose the maximum available fine of $10,000 in addition to the maximum available imprisonment of two years on the underlying offense. This argument fails because the repeater statute explicitly referred to increasing "the maximum *term of imprisonment* prescribed by law for that crime." WIS. STAT. § 939.62(1) (emphasis added). Because the penalty enhancer did not increase the potential fine, the actual fine imposed, if any, is irrelevant.

¶4 Medina's third contention is that the State failed to prove the repeater allegation because the copies of prior convictions it provided to the court were uncertified and the PSI and criminal background report were not "official documents." We are satisfied, however, that the evidence provided was sufficient under ***State v. Saunders***, 2002 WI 107, ¶¶3, 25-26, 255 Wis. 2d 589, 649 N.W.2d 263 (copies of judgments of conviction need not be certified), and ***State v. Caldwell***, 154 Wis. 2d 683, 693-94, 454 N.W.2d 13 (Ct. App. 1990) (State may rely on PSI if PSI contains sufficient information about the prior convictions).

¶5 Medina's fourth contention is that the trial court could not increase his sentence as a repeat offender because it did not explicitly cite WIS. STAT. § 939.62 at the sentencing hearing. However, there is no such requirement. Both the information and the judgment of conviction properly cited § 939.62.

¶6 Medina's fifth contention is that the trial court could not increase his sentence based on his use of a dangerous weapon because the jury had found him not guilty of using a dangerous weapon by acquitting him of the attempted homicide charge. This argument fails because the jury explicitly indicated on the verdict form that it found Medina had committed the offense of second-degree recklessly endangering safety while using a dangerous weapon. Nor was Medina placed in double jeopardy by having the jury consider the dangerous weapon enhancer after acquitting on the attempted homicide charge because the enhancer only applied to the crime of conviction, not the charged crime. *See* ***State v. Harris***, 119 Wis. 2d 612, 616-18, 350 N.W.2d 633 (1984).

¶7 Medina's sixth contention is that the trial court could not increase his sentence based on his use of a dangerous weapon because the jury was not instructed on "the nexus requirement" between the crime and his possession of the weapon, as in ***State v. Peete***, 185 Wis. 2d 4, 8-10, 18-21, 517 N.W.2d 149 (1994). ***Peete*** is not applicable here, however, because Medina was charged with *using* a dangerous weapon, not merely *possessing* one, and the jury was instructed accordingly. No additional nexus instruction was required.

¶8 Medina's seventh contention is that the trial court could not increase his sentence based on his use of a dangerous weapon because the verdict form did not cite the penalty enhancer statute. None of the cases he cites, however, impose such a requirement.

¶9 Finally, Medina contends that the trial court could not impose his sentence consecutive to the life sentence he was already serving on a separate conviction. We disagree. WISCONSIN STAT. § 973.15(2)(a) explicitly authorizes a sentencing court to impose a sentence consecutive to any other sentence

previously imposed. There is no requirement that an information specify that a sentence may be imposed consecutively, or that the trial court must specify a prior sentence in the judgment.

By the Court.—Order affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5 (2001-02).