COURT OF APPEALS
DECISION
DATED AND FILED

October 30, 2003

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 03-1530-CR **Cir. Ct. No. 02CT000453**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

SCOTT E. FRYE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Sauk County: JAMES EVENSON, Judge. *Affirmed.*

¶1 VERGERONT, J.[1] Scott Frye appeals a judgment of conviction for operating with a prohibited alcohol content of .02 or more, fourth offense, in violation of WIS. STAT. §§ 340.01(46m)(c) and 346.63(1)(b). Frye moved to dismiss the complaint because it invoked the penalties under WIS. STAT.

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2001-02). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

§ 346.65(2)(d), which apply if the total number of suspensions, revocations, and other counted convictions equals four, whereas, he contended, the applicable penalty is contained in § 346.65(2)(b), under which the number of suspensions, revocations, and other counted convictions within a ten-year period equals two. The trial court denied the motion to dismiss, concluding that § 346.65(2)(d) is applicable. We agree and therefore affirm.

¶2 The offense for which Frye was convicted occurred on September 28, 2002. At that time Frye had three prior convictions for driving under the influence of an intoxicant (OWI) on the following dates:

Violation Date	*Conviction Date*
1/20/91	5/22/91
2/28/92	6/9/92
12/8/95	1/16/97

¶3 WISCONSIN STAT. § 346.65(2) provides in part:

> **(2)** Any person violating s. 346.63 (1):
>
> (a) Shall forfeit not less than $150 nor more than $300, except as provided in pars. (b) to (f).
>
> (b) Except as provided in par. (f), shall be fined not less than $350 nor more than $1,100 and imprisoned for not less than 5 days nor more than 6 months if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations and other convictions counted under s. 343.307 (1) within a 10-year period, equals 2, except that suspensions, revocations or convictions arising out of the same incident or occurrence shall be counted as one.
>
> (c) Except as provided in pars. (f) and (g), shall be fined not less than $600 nor more than $2,000 and imprisoned for not less than 30 days nor more than one year in the county jail if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations and other convictions counted under s. 343.307 (1), equals 3, except that suspensions,

> revocations or convictions arising out of the same incident or occurrence shall be counted as one.
>
> (d) Except as provided in pars. (f) and (g), shall be fined not less than $600 nor more than $2,000 and imprisoned for not less than 60 days nor more than one year in the county jail if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations and other convictions counted under s. 343.307 (1), equals 4, except that suspensions, revocations or convictions arising out of the same incident or occurrence shall be counted as one.
>
> (e) Except as provided in pars. (f) and (g), is guilty of a Class H felony and shall be fined not less than $600 and imprisoned for not less than 6 months if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations and other convictions counted under s. 343.307 (1), equals 5 or more, except that suspensions, revocations or convictions arising out of the same incident or occurrence shall be counted as one.

¶4 Frye contends that because his first two violations and convictions occurred more than ten years prior to this offense, they are not counted under WIS. STAT. § 346.65(2)(b). He reasons that the term "ten-year period" applies to the ten years prior to the offense at issue. Therefore, he asserts, this is only his second offense within a ten-year period and para. (2)(b) applies to him. Because this paragraph applies, Frye concludes, there is no need to read the subsequent paragraphs.

¶5 Resolution of this issue requires that we construe the statute, which presents a question of law subject to our de novo review. ***State v. Setagord***, 211 Wis. 2d 397, 405-06, 565 N.W.2d 506 (1997). The purpose of statutory interpretation is to give effect to the intent of legislature. ***Id.*** at 406. We begin with an examination of the language of the statute, and if that is clear on its face, we apply the language to the facts at hand. ***Id.*** We do not read related sections of

a statute in isolation but read them together to determine their meaning. ***J.L.W. v. Waukesha County***, 143 Wis. 2d 126, 130, 420 N.W.2d 398 (Ct. App. 1998)

¶6 We disagree with Frye's method of analyzing the statute. In order to properly interpret WIS. STAT. § 346.65(2), we do not stop reading at para. (b) but continue through para. (e) because these all relate to penalties based on the number of offenses. When we do this, we see that para. (d) plainly applies to Frye: including the conviction for this offense, he has four convictions. Under para. (d), there is no time period within which the suspensions, revocations, and counted convictions have to occur, as there is under para. (b). Para. (c), applying to three offenses, suspensions, revocations, and counted convictions, and para. (e), applying to five, are like para. (d) in this respect. We do not agree with Frye that there is a conflict between para. (b) and para. (d) that creates an ambiguity. It is evident when reading all these paragraphs together that the legislature intended the penalty to increase with the number of offenses. The inclusion of a ten-year period in para. (b) plainly expresses the legislative intent that if the offense at issue is only the second suspension, revocation, or counted conviction, and the first occurred more than ten years previously, then the increased penalty in para. (b) does not apply and the penalty set forth in para. (a) does. The absence of a ten-year period in paras. (c)-(e) plainly expresses the legislature's intent that, when there are three or more suspensions, revocations, and counted convictions within any time period, the increased penalties in those paragraphs apply.

¶7 Reading the paragraphs together, we are satisfied that the legislature intended an increased penalty for each additional suspension, revocation, or counted conviction after two, and did not intend that the ten-year period included only in WIS. STAT. § 346.65(2)(b) would reduce the penalties for persons with three or more suspensions, revocations, and counted convictions.

By the Court.—Judgment affirmed.

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