

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 31, 2008

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2007AP1097-CR

Cir. Ct. No. 2005CT656

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

STEVEN R. SHELL,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for La Crosse County:
ROGER W. LEGRAND, Judge. *Reversed and cause remanded.*

¶1 BRIDGE, J.¹ Steven R. Shell appeals an order denying his motion for postconviction relief on the basis that the circuit court improperly sentenced

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2005-06). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

him following his guilty plea to operating with a prohibited alcohol content, fourth offense, under WIS. STAT. § 346.63(1)(b).

¶2 Shell argues that the circuit court improperly considered a 2002 Michigan conviction for operating while intoxicated as a penalty enhancer under WIS. STAT. § 346.65. Shell contends that the circuit court was precluded from considering the Michigan conviction because a Vernon County circuit court had previously decided that the conviction was void for sentence enhancement purposes. The State filed a letter conceding that the case should be remanded for resentencing. We therefore reverse the circuit court order and remand the cause for resentencing.

By the Court.—Order reversed and cause remanded.

This opinion will not be published.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

