

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**December 16, 2010**

A. John Voelker  
Acting 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. 2010AP666-CR  
STATE OF WISCONSIN**

Cir. Ct. No. 2008CF205

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**TROY M. KRATZ,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Columbia County: ALAN J. WHITE, Judge. *Affirmed.*

Before Vergeront, P.J., Higginbotham, and Blanchard, JJ.

¶1 PER CURIAM. Troy M. Kratz appeals from a judgment of conviction for battery causing great bodily harm as a party to a crime and as a repeat offender, and the order denying his motion for postconviction relief. He argues that the circuit court erred because the State did not prove the convictions

that led to the penalty enhancer for being a repeat offender. We conclude that under the totality of the circumstances the record demonstrates that Kratz understood all of the consequences of his plea. We therefore affirm the judgment and order.

¶2 Kratz argues on appeal that the State did not validly prove his status as a repeat offender through either specific documentary evidence or by an admission by the defendant as required by WIS. STAT. § 973.12(1) (2007-08).<sup>1</sup> We disagree. We conclude, based on the totality of the record, that Kratz's plea to the information constituted an admission to the prior charges for the purposes of § 973.12. See *State v. Liebnitz*, 231 Wis. 2d 272, 288, 603 N.W.2d 208 (1999).

¶3 In *Liebnitz*, the circuit court accepted a plea from the defendant without directly asking whether he had been convicted of the crimes that would qualify him for a status as a repeat offender. *Id.* at 284. The supreme court concluded that the record contained sufficient information to show that Liebnitz's pleas to the information constituted an admission to the prior convictions. *Id.* The record showed that both the criminal complaint and the information charged Liebnitz as a repeat offender. *Id.* at 285. When Liebnitz appeared in court, the judge read each count and the possible penalties, and asked Liebnitz if he understood the enhancement of the penalties. *Id.* at 286. The court also considered that when he signed the plea questionnaire, Liebnitz acknowledged that the complaint established a factual basis for his plea. *Id.* And finally, the court

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

considered that during the plea colloquy, the judge asked if Liebnitz had chosen not to challenge the criminal complaint. *Id.*

¶4 In this case, the criminal complaint issued against Kratz charged him with battery causing great bodily harm as a party to a crime and as a repeat offender. The complaint stated:

And further, invoking the provisions of sec. 939.62(1) (b) Wis. Stats., because the defendant is a repeater, having been convicted of at least one felony [during] the five year period immediately preceding the commission of this offense, which convictions remain of record and unreversed, the maximum term of imprisonment for the underlying crime may be increased by not more than four years.

The complaint listed three felony convictions for Kratz, each of which was less than five years old. The information repeated, in essence, the repeater allegation in the criminal complaint we have quoted.

¶5 At Kratz's preliminary hearing, the court asked Kratz's counsel if he had received a copy of the information. Counsel responded: "Sir, I have just received a copy. It seems to be a mirror of the complaint. We will waive reading at this time and stand mute."

¶6 The plea questionnaire Kratz signed stated that he was being charged as a repeat offender, and stated the maximum penalty for the crime as a repeat offender. The questionnaire also said: "I understand that if the judge accepts my plea, the judge will find me guilty of the crime(s) to which I am pleading based upon the facts in the criminal complaint and/or the preliminary examination and/or as stated in court."

¶7 At the plea hearing, the court explained that it understood that Kratz was entering a plea to the count for battery causing great bodily harm and that the other counts would be dismissed and read in. The court then asked Kratz:

And you understand further that – Just let me check here. You understand further that it appears that the maximum sentence you could receive from me on Count Number 1 is a total, with the repeater enhancer, of ten years. Do you understand that?

And Kratz answered: “Yes, I do understand that.” The court then asked defense counsel: “[W]hat plea does your client wish to enter to Count Number 1, battery with great bodily harm as repeater?” Defense counsel responded: “No contest.” The court then asked Kratz if this was true, and Kratz responded: “Yes, your Honor.” The court later asked the State if it was relying on the complaint for a factual basis for the charge, and the State said it was. The court asked Kratz’s counsel if he had any objection to that, and counsel did not. And at sentencing, the court stated:

The fact remains, though, Mr. Kratz, that you have a history of batteries, felony batteries; ‘04 you had an obstruction; 2004 you also had a felony burglary, you had a felony battery to a police officer in ‘04; and in ‘07, you had another felony battery. Now you have a conviction of a battery with great bodily harm.

¶8 The record establishes Kratz was informed that he was being charged as a repeat offender, the complaint explained the crimes on which the enhancement was based, both the complaint and the information explained that the maximum penalty Kratz faced was increased by four years as a result of the enhancement, and Kratz was informed, both in court and by the plea questionnaire, that the maximum penalty for the crime with the enhancement was ten years. We conclude that the totality of the record establishes that Kratz

understood the nature and consequences of the charge to which he entered his no contest plea. We affirm the judgment and order of the circuit court.

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

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

