

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 9, 2014

Diane M. Fremgen
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. 2013AP1874-CR

Cir. Ct. No. 2007CF358

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ANTHONY R. GIEBEL,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Fond du Lac County: DALE L. ENGLISH, Judge. *Affirmed.*

¶1 GUNDRUM, J.¹ Anthony R. Giebel appeals from a judgment of conviction on one count of battery as a repeater, entered after revocation of his

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

probation, and from an order denying postconviction relief. Giebel contends that a conflict exists between WIS. STAT. §§ 973.01 and 939.62 when applied to misdemeanor repeaters like himself and that the circuit court should have recognized this conflict and modified his sentence in a manner consistent with one of our unpublished decisions, *State v. Gerondale*, Nos. 2009AP1237/1238-CR, unpublished slip op. (WI App Nov. 3, 2009). We now have the benefit of a recent published decision addressing the concern surrounding these statutory provisions. *See State v. Lasanske*, 2014 WI App 26, ___ Wis. 2d ___, ___ N.W.2d ___. In light of this recent decision, we conclude that Giebel's sentence is appropriate and affirm.

Background

¶2 Giebel pled to one count of misdemeanor battery as a repeater, contrary to WIS. STAT. §§ 940.19 and 939.62(1)(a).² The circuit court withheld sentence and placed Giebel on probation. His probation was revoked and the court sentenced him to eighteen months of initial confinement and six months of extended supervision. Giebel filed a postconviction motion arguing that his sentence was improperly bifurcated. The circuit court denied the motion, and Giebel appeals.

² Giebel also pled to one count of disorderly conduct, contrary to WIS. STAT. § 947.01, but that count is not relevant to this appeal.

Standard of Review

¶3 Whether Giebel’s sentence comports with statutory requirements requires us to interpret the applicable statutes, a matter of law we review de novo. *State v. Murdock*, 2000 WI App 170, ¶18, 238 Wis. 2d 301, 617 N.W.2d 175.

Discussion

¶4 For several years now, our courts have dealt with confusion over the application of seemingly conflicting statutes related to enhanced sentences imposed when a defendant is convicted of a misdemeanor as a repeater. Fortunately, a recently published decision resolves the matter.

¶5 WISCONSIN STAT. § 939.62(1)(a) allows a circuit court to sentence a defendant convicted of a misdemeanor as a repeater to a maximum term of imprisonment of up to two years. A sentence of more than one year must be to the Wisconsin state prisons. WIS. STAT. § 973.02. WISCONSIN STAT. § 973.01(1) and (2) respectively provide that “whenever a court sentences a person to imprisonment in the Wisconsin state prisons for a felony ... or a misdemeanor ... the court shall impose a bifurcated sentence” consisting of “a term of confinement in prison followed by a term of extended supervision.” Section 973.01(2)(b)10. and (d) respectively provide that “the term of confinement in prison may not exceed 75% of the total length of the bifurcated sentence” and “[t]he term of extended supervision may not be less than 25% of the length of the term of confinement in prison imposed under par. (b).”

¶6 Giebel points to WIS. STAT. § 973.01(2)(c)1. as the source of the conflict. That provision provides that “[s]ubject to the minimum period of extended supervision required under par. (d), the maximum term of confinement

in prison specified in par. (b) may be increased by any applicable penalty enhancement statute.” Giebel is correct that this provision would create a conflict if applicable to misdemeanor sentences. We need not explain the intricacies of the conflict, however, because we have now definitively ruled that “§ 973.01(2)(c)1. is not applicable to misdemeanors.” *Lasanske*, 2014 WI App 26, ¶11. As a result, no statutory conflict exists, and Giebel’s sentence need only satisfy the other applicable statutory provisions.

¶7 Because *Lasanske* is directly on point, we borrow from the decision:

[Giebel] was eligible for up to two years of imprisonment on [the] count to which he pled. His sentence had to be bifurcated, with no more than 75% of the total length of the bifurcated sentence as confinement and no less than 25% of the length of the term of confinement as extended supervision. It was.

See Lasanske, 2014 WI App 26, ¶12.

By the Court.—Judgment and order affirmed.

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

