COURT OF APPEALS
DECISION
DATED AND FILED

September 26, 2017

Diane M. Fremgen
Clerk of Court of Appeals

Appeal Nos. 2016AP2330-CR
2016AP2331-CR

Cir. Ct. Nos. 2014CF1032
2014CF1539

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT III

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CHRISTOPHER R. POTTER,

DEFENDANT-APPELLANT.

APPEALS from an order of the circuit court for Brown County: KENDALL M. KELLEY, Judge. *Affirmed*.

Before Stark, P.J., Hruz and Seidl, JJ.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. Christopher Potter appeals an order denying his postconviction motion to vacate judgments of conviction and dismiss charges of

misdemeanor possession of THC and felony possession of THC, second and subsequent offense. Potter contends the statute prohibiting possession of THC is void for vagueness. We reject that argument and affirm the order.

¶2 Potter contends WIS. STAT. § 961.41(3g) (2015-16)[1] is unconstitutionally vague on its face because it contains an exception for controlled substances obtained pursuant to a valid prescription of a "practitioner," and "practitioner" is defined in a different statute that is not cross-referenced within subsection (3g). Potter had a medical marijuana prescription issued by a Michigan physician. However, "practitioner" is defined in WIS. STAT. § 961.01(19)(a) as a "physician … licensed, registered, certified or otherwise permitted to distribute, dispense, conduct research with respect to, administer or use in teaching or chemical analysis a controlled substance in the course of professional practice or research *in this state*." (Emphasis added.) Therefore, Potter's prescription from a Michigan physician was not valid in this state.

¶3 A party who brings a constitutional challenge to a statute must show that it is unconstitutional beyond a reasonable doubt. ***State v. Smith***, 215 Wis. 2d 84, 90, 572 N.W.2d 496 (Ct. App. 1997). In a facial vagueness challenge, the challenger must establish beyond a reasonable doubt that there is no possible application or interpretation of the statute that would be constitutional. ***Id.*** at 90-91. Whether a statute is void for vagueness depends upon whether it gives fair notice of the prohibited conduct and also provides an objective standard for enforcement of violations. ***Id.*** at 91. To be valid, a statute must sufficiently warn persons wishing to obey the law that their conduct comes near the proscribed area.

[1] All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

Id. To be void for vagueness, the statute must be so ambiguous that one who is intent on obedience cannot tell whether the proscribed conduct is approached. ***Id.*** at 92.[2]

¶4 For several reasons, we reject Potter's argument that WIS. STAT. § 961.41(3g) is unconstitutionally vague. First, the word "practitioner" is clearly defined in WIS. STAT. § 961.01(19)(a). There is no requirement that terms used in a statute must be cross-referenced in the particular statute, and Potter cites no authority for that proposition. Second, words that might otherwise be unduly vague may be considered sufficiently definite because of their usage in other statutes. *See* 1 WAYNE R. LAFAVE, *Substantive Criminal Law* § 2.3(b) at 146 (2d ed. 2003). Here, the applicable definition is contained in the same chapter of the statutes. Third, as the circuit court noted, Potter's argument is essentially a criticism of the structure of all Wisconsin statutes because it is common to include definitions in the first section of a chapter or subchapter. Finally, the word "practitioner" could apply to such a wide variety of professions that a person wishing to comply with the law should expect to have that term defined elsewhere in the statutes.

By the Court.—Order affirmed.

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

[2] A statute is also void for vagueness if a trier of fact must apply its own standards of culpability rather than those set out by the statute. ***State v. Smith***, 215 Wis. 2d 84, 92, 572 N.W.2d 496 (Ct. App. 1997). Potter does not challenge the statute on that basis.