



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

October 28, 2015

To:

Hon. Bruce E. Schroeder
Circuit Court Judge
Kenosha County Courthouse
912 56th Street
Kenosha, WI 53140

Rebecca Matoska-Mentink
Clerk of Circuit Court
Kenosha County Courthouse
912 56th Street
Kenosha, WI 53140

Robert Probst
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Robert D. Zapf
District Attorney
Molinaro Bldg.
912 56th Street
Kenosha, WI 53140-3747

Maurice Carpenter, #283832
Waupun Corr. Inst.
P.O. Box 351
Waupun, WI 53963-0351

You are hereby notified that the Court has entered the following opinion and order:

2014AP1875-CR

State of Wisconsin v. Maurice Carpenter (L.C. #1994CF326)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

Maurice Carpenter appeals pro se from an order amending his judgment of conviction. He contends that he received excessive sentences and is entitled to commutation. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2013-14).¹ We affirm the order of the circuit court.

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

In 1994, Carpenter was convicted following a jury trial of (1) aggravated battery with intent to cause great bodily harm, (2) armed robbery, and (3) operating a motor vehicle without the owner's consent, all as a party to a crime and as a repeater.² On the first count, the circuit court sentenced Carpenter to a twenty-five year prison sentence. On the second count, the court sentenced him to a fifty year prison sentence. On the third count, the court sentenced him to an eleven year prison sentence. The court ordered the sentences to run consecutively.

In March 2014, the department of corrections (DOC) wrote a letter to the circuit court seeking clarification of the count one sentence. The letter notes that, per the judgment of conviction, Carpenter was convicted of a Class C felony for violating WIS. STAT. § 940.19(2). The letter further notes that the 1994 version of that statute provides, "Whoever causes substantial bodily harm to another by an act done with intent to cause bodily harm to that person or another is guilty of a Class E felony." Sec. 940.19(2) (1993-94). Given this difference in felony classification, the DOC questioned whether the count one sentence was excessive.

In June 2014, Carpenter wrote his own letter to the circuit court. In it, he argued that his count one sentence was excessive due to the difference in felony classification cited by the DOC. He also argued that his count three sentence was excessive. According to Carpenter, the maximum penalty for that count was a nine year prison sentence—two years less than the court imposed.

Ultimately, the circuit court denied Carpenter relief. The court attributed the difference in felony classification to a technical defect resulting from a legislative change to the applicable

² The penalty for the battery count was also enhanced by Carpenter's use of a dangerous weapon.

statute. After concluding that the defect did not prejudice Carpenter, the court ordered the count one judgment of conviction amended to reflect the correct statutory subsection. The court also concluded that the count three sentence was proper and in accordance with the applicable maximum. This appeal follows.

On appeal, Carpenter renews his contention that he received excessive sentences on counts one and three and is entitled to commutation. We disagree.

Like the circuit court, we attribute the difference in felony classification to a technical defect resulting from a legislative change to the applicable statute. Under an earlier version of the statute, the crime of aggravated battery with intent to cause great bodily harm was a Class C felony prohibited by WIS. STAT. § 940.19(2) (1991-92).³ This was changed in 1994,⁴ so that the same crime was prohibited by § 940.19(5) (1993-94),⁵ which was also a Class C felony. Thus, Carpenter should have been charged and convicted of violating § 940.19(5) (1993-94), not § 940.19(2) (1993-94). The circuit court amended the count one judgment of conviction to reflect that fact.

Although Carpenter was charged and convicted of violating the wrong statutory subsection, we fail to see how he was prejudiced by this defect. As noted by the State, Carpenter

³ WISCONSIN STAT. § 940.19(2) (1991-92) provides, “Whoever causes great bodily harm to another by an act done with intent to cause great bodily harm to that person or another with or without the consent of the person so harmed is guilty of a Class C felony.”

⁴ 1993 Wis. Act 441, § 4 repealed and recreated WIS. STAT. § 940.19. Its effective date was May 10, 1994. Carpenter committed his battery on May 27, 1994.

⁵ WISCONSIN STAT. § 940.19(5) (1993-94) provides, “Whoever causes great bodily harm to another by an act done with intent to cause either substantial bodily harm or great bodily harm to that person or another is guilty of a Class C felony.”

was correctly apprised of the elements of the crime and penalties associated therewith. Moreover, the jury was correctly instructed regarding the elements of proof necessary to convict him. Consequently, there was no need to set aside the count one judgment of conviction or commute Carpenter's sentence. *See* WIS. STAT. § 971.26 (no judgment shall "be affected by reason of any defect or imperfection in matters of form which do not prejudice the defendant"); *Craig v. State*, 55 Wis. 2d 489, 493, 198 N.W.2d 609 (1972) (the failure to correctly cite the specific statutory subsection in the charging document and subsequent judgment of conviction is a technical defect governed by § 971.26). For these reasons, we are satisfied that the circuit court properly remedied the defect by amending the count one judgment of conviction.

We also conclude that the circuit court properly denied Carpenter relief on count three. As noted, Carpenter was convicted of operating a motor vehicle without the owner's consent. This was a Class D felony, which carried a maximum penalty of a five year prison sentence. WIS. STAT. §§ 943.23(2) and 939.50(3)(d) (1993-94). However, because Carpenter was also sentenced as a repeater for a prior felony conviction, the maximum term could be increased by an additional six years. WIS. STAT. § 939.62(1)(b) (1993-94). Five years plus six years nets the eleven year maximum term that Carpenter received.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals