COURT OF APPEALS
DECISION
DATED AND FILED

November 5, 2026

Samuel A. Christensen
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. 2025AP597-CR **Cir. Ct. No. 2020CF2473**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DENNIS D. BANKS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Dane County: JOHN D. HYLAND, Judge. *Affirmed*.

Before Graham, P.J., Kloppenburg, and Nashold, JJ.

¶1 KLOPPENBURG, J. After a jury convicted Dennis D. Banks of one count of first-degree sexual assault of a child, the circuit court, applying the persistent repeater enhancer under WIS. STAT. § 939.62(2m)(c) (2023-24), sentenced Banks to life imprisonment without the possibility of release on

extended supervision.[1] On appeal, Banks argues that the State did not at sentencing meet its burden to provide sufficient evidence under WIS. STAT. § 973.12 to prove Banks's persistent repeater status under § 939.62(2m)(b)2., when the State relied on the court taking judicial notice of Banks's prior conviction by observing an uncertified electronic copy of the judgment of conviction.[2] In the alternative, Banks argues that the court erred in dismissing without an evidentiary hearing his postconviction motion alleging that trial counsel provided constitutionally ineffective assistance in failing to move to dismiss the persistent repeater enhancer in the criminal complaint and in failing to object to the court taking judicial notice of the prior conviction at sentencing.

¶2 We conclude that the State met its burden to prove Banks's persistent repeater status by providing sufficient information to enable the circuit court to take judicial notice of the electronic copy of the prior judgment of conviction in the electronic record. We further conclude that the court properly dismissed Banks's ineffective assistance of counsel claims without a hearing because the record conclusively shows that a motion to dismiss the inclusion of the persistent repeater enhancer in the criminal complaint would lack merit and that Banks was not prejudiced by trial counsel failing to object to the State's mode of proving his persistent repeater status. Accordingly, we affirm.

[1] All references to the Wisconsin Statutes are to the 2023-24 version.

[2] "Persistent repeater status" refers to having the requisite prior offense to be a persistent repeater under the meaning of WIS. STAT. § 939.62(2m)(b)2. ("The actor is a persistent repeater" if "[t]he actor has been convicted of a serious child sex offense on at least one occasion at any time preceding the date of violation of the serious child sex offense for which [the actor] presently is being sentenced under [WIS. STAT.] ch. 973, which conviction remains of record and unreversed.").

BACKGROUND

¶3 In August 2019, the State filed a criminal complaint charging Banks with two counts of first-degree sexual assault of a child and one count of felony bail jumping. On September 30, 2020, the State moved to dismiss the complaint so that it could refile the complaint adding persistent repeater enhancers to the sexual assault charges. On that same day, the circuit court granted the motion and dismissed the complaint, and the State refiled the complaint with the same charges along with persistent repeater enhancers on the sexual assault charges.[3] Trial counsel did not move to dismiss the persistent repeater enhancers in the refiled criminal complaint.

¶4 The refiled criminal complaint alleged that Banks was a persistent repeater because he had in 2003 been convicted of a serious child sex offense, repeated sexual assault of the same child. Due to the persistent repeater enhancers, Banks faced a mandatory sentence of life imprisonment without the possibility of extended supervision if convicted of at least one of the counts of first-degree sexual assault of a child. *See* WIS. STAT. § 939.62(2m)(c). A jury found Banks guilty of one count of first-degree sexual assault of a child and bail jumping.

¶5 The circuit court held a sentencing hearing on August 24, 2022. To support the persistent repeater enhancer, the State asked the court to take judicial

[3] For ease of reading, we refer to the criminal complaint that the State refiled in this case as "the refiled criminal complaint."

The refiled criminal complaint also included a repeater enhancer on the bail-jumping charge, but Banks makes no appellate argument challenging that repeater enhancer. Accordingly, we do not further address it in this opinion.

notice of Banks's prior conviction and provided the case number and county for the case in which the prior judgment of conviction had been entered. The court then accessed that case in the electronic record maintained by the Dane County Clerk of Court and took judicial notice of the prior conviction based on its own observation of the uncertified electronic copy of the judgment of conviction in that record. Trial counsel did not object. Applying the persistent repeater enhancer on the one count of first-degree sexual assault of a child in this case, the court sentenced Banks to life imprisonment without the possibility of release on extended supervision.

¶6 Banks filed a postconviction motion for resentencing in which he argued that: the circuit court erred in allowing the State to include the persistent repeater enhancer in the refiled criminal complaint; the State at sentencing provided insufficient evidence of Banks's prior conviction; and trial counsel was constitutionally ineffective for not moving to dismiss on the first issue and not objecting on the second issue. The circuit court denied the motion in a written order, without holding a ***Machner*** hearing.[4]

¶7 Banks appeals.

DISCUSSION

¶8 Banks challenges the application at sentencing of the persistent repeater enhancer based on the circuit court taking judicial notice of the prior

[4] ***State v. Machner***, 92 Wis. 2d 797, 285 N.W.2d 905 (Ct. App. 1979) (setting forth requirement for an evidentiary hearing on a motion alleging ineffective assistance of counsel to permit trial counsel to explain alleged errors).

conviction.[5] He frames this challenge as a sufficiency of the evidence claim based on the State's purported failure to meet its burden to prove the prior conviction. He also claims that trial counsel provided constitutionally ineffective assistance in failing to move to dismiss the enhancer in the refiled criminal complaint and in failing to object to the court taking judicial notice of the prior conviction at sentencing. We address Banks's claims in turn.

I. Sufficiency of the Evidence to Prove Repeater Status

¶9 Banks argues that the circuit court erred when it determined that Banks was a persistent repeater because the State failed to prove the prior conviction.[6] Banks contends that the State failed to meet its burden of proof because the State did not provide the court with sufficient evidence for the court to take judicial notice of Banks's prior conviction. The State argues that it may—and did—prove Banks's prior conviction by means of judicial notice when the State during sentencing provided the prior case's county and case number, and the court used that information to observe the uncertified electronic copy of the judgment of conviction in the electronic record maintained by the Dane County Clerk of Court.

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[5] In his appellant's brief, Banks also argues that the circuit court erred in allowing the persistent repeater enhancer to be included in the refiled criminal complaint. However, in his reply brief, Banks concedes that he has forfeited this argument, and that he may raise this asserted error only through a claim that trial counsel was constitutionally ineffective in failing to dismiss the enhancer. *See* ***State v. Carprue***, 2004 WI 111, ¶47, 274 Wis. 2d 656, 683 N.W.2d 31 (explaining that, in the absence of an objection by trial counsel, appellate courts "follow 'the normal procedure in criminal cases,' which 'is to address waiver [or forfeiture] within the rubric of the ineffective assistance of counsel'" (quoted source omitted)). We accept his concession on this issue.

[6] Under WIS. STAT. § 973.12(1), a defendant is subject to the persistent repeater enhancer "[i]f the prior convictions are admitted by the defendant or proved by the state." Here, the parties do not dispute that Banks did not admit the prior conviction, and so the only question is whether the State proved the prior conviction.

¶10 As an initial matter, we reject the State's assertion that Banks has forfeited direct review of his challenge to the circuit court's application of the persistent repeater enhancer at sentencing based on taking judicial notice of the prior conviction. As stated, in support of this challenge, Banks argues that the State did not meet its burden to prove the prior conviction based on judicial notice, and that, therefore, there was insufficient evidence of the prior conviction to support the court's application of the persistent repeater enhancer. Sufficiency of the evidence challenges are not subject to the general forfeiture rule. ***State v. Hayes***, 2004 WI 80, ¶49, 273 Wis. 2d 1, 681 N.W.2d 203 (The accused can "raise a challenge to the sufficiency of the evidence for the first time on appeal as a matter of right."). In asserting that Banks has forfeited this challenge, the State makes only a conclusory reference to ***State v. Ndina***, 2009 WI 21, ¶29, 315 Wis. 2d 653, 761 N.W.2d 612, and ***State v. Coffee***, 2020 WI 1, ¶22, 389 Wis. 2d 627, 937 N.W.2d 579, without making any accompanying argument. Accordingly, we proceed to address on its merits Banks's sufficiency of the evidence challenge directed at the court taking judicial notice of his prior conviction.

¶11 Banks did not in the circuit court and does not on appeal argue that the existence or date of Banks's prior conviction narrated by the circuit court are inaccurate. Banks's challenge is solely to the State's mode of proof. As we explain, his challenge fails. Our analysis, as we explain in more detail in the following sections, proceeds as follows. Under WIS. STAT. § 902.01, the circuit court may take judicial notice of an uncertified electronic copy of a judgment of conviction in another Dane County case, which it observes in an electronic record maintained by the Dane County Clerk of Court. Under WIS. STAT. § 973.12(1), an uncertified electronic copy of a judgment of conviction in an electronic record

maintained by the clerk of court may prove the prior conviction. Here, the electronic copy of the judgment of conviction observed by the court satisfied § 973.12(1) by containing the date and the crime of the prior conviction, and, under § 902.01(4), the State provided the court with the necessary information for the court to take judicial notice of the prior conviction, by providing the county and case number of the prior case. Accordingly, we conclude that the State provided sufficient evidence under § 973.12 to prove Banks's repeater status under WIS. STAT. § 939.62(2m)(b)2.

A. Standard of review and principles of statutory interpretation

¶12 To determine whether the State provided sufficient evidence to support application of the persistent repeater enhancer, we interpret and apply WIS. STAT. § 902.01 (judicial notice of adjudicative facts), and WIS. STAT. § 973.12(1) (evidence required to prove persistent repeater status) to the undisputed facts of this case. The interpretation and application of statutes present questions of law that we review independently. ***Phelps v. Physicians Ins. Co. of Wis.***, 2009 WI 74, ¶36, 319 Wis. 2d 1, 768 N.W.2d 615.

¶13 When interpreting a statute, we begin with its language. ***State ex rel. Kalal v. Circuit Ct. for Dane Cnty.***, 2004 WI 58, ¶¶44-45, 271 Wis. 2d 633, 681 N.W.2d 110. "Statutory language is given its common, ordinary, and accepted meaning, except that technical or specially-defined words or phrases are given their technical or special definitional meaning." ***Id.***, ¶45. "Importantly, 'ascertaining the plain meaning of a statute requires more than focusing on a single sentence or portion thereof.'" ***Brey v. State Farm Mut. Auto. Ins. Co.***, 2022 WI 7, ¶11, 400 Wis. 2d 417, 970 N.W.2d 1 (quoted source omitted). Statutory interpretation involves "'a full consideration of all relevant intrinsic

sources' including 'the statutory text at issue, related statutes and phrases, a statute's place within the statutory structure, its stated or textually manifest purpose, and statutory history.'" ***Brekke v. Midwest Med. Ins. Co.***, 2026 WI 29, ¶20, 421 Wis. 2d 381, 37 N.W.3d 515 (quoted source omitted). "Statutory language is to be interpreted 'reasonably, to avoid absurd or unreasonable results.'" ***Id.*** (quoted source omitted). In addition, "when engaging in statutory interpretation, we are assisted by prior decisions that have examined the relevant statutes." ***State v. Soto***, 2012 WI 93, ¶20, 343 Wis. 2d 43, 817 N.W.2d 848.

B. Additional Background

¶14 The refiled criminal complaint charged Banks as a persistent repeater under WIS. STAT. § 939.62(2m)(b)2. based on an alleged 2003 conviction for a serious child sex offense.

¶15 At sentencing, to prove Banks's qualifying prior conviction, the State asked that the circuit court take judicial notice of Banks's prior conviction. The State provided the case number of the prior conviction and noted that the conviction was a Dane County court record. The court then said:

> The court is observing the court file in [the case number provided by the State]. The Judgment of Conviction entered at the time of conviction[,] January 9, 2003, contains a single count of repeated sexual assault of the same child under [WIS. STAT. §] 948.025(1). It's a Class B felony.
>
> I'm satisfied that the court record maintained through the Dane County Clerk of Court's office provides the factual basis for the persistent repeater allegation within the information.

¶16 In its written order denying Banks's postconviction motion, the circuit court explained: "This court did review the official record as maintained by

the clerk of court and not a report …. [The court viewed] an electronic copy of the judgment of conviction, which the Court viewed by accessing the document through [the Wisconsin Circuit Court Access system] on the bench."

¶17 We clarify how the circuit court accessed the electronic judgment of conviction. The Consolidated Court Automation Programs (CCAP) is the Wisconsin Court System's information technology office and provides a variety of critical services to the Wisconsin Court System. One such service, CCAP's Case Management system software, stores circuit court records electronically and—with the implementation of mandatory electronic filing—those electronically stored records now constitute the official record as maintained by the clerk of court. *See* WIS. STAT. § 801.18(9)(a) (electronic documents constitute the official record); § 801.18(9)(c) ("[T]he clerk of court shall maintain the official court record only in electronic format for all cases[.]"); *Consolidated Court Automation Programs (CCAP)*, WISCONSIN COURT SYSTEM, https://www.wicourts.gov/courts/offices/ccap.htm (last visited Oct. 12, 2026). Circuit courts may access documents stored within CCAP's Case Management system through CCAP's Wisconsin Circuit Court Access system (WCCA) software or through CCAP's "Judicial Dashboard" software.[7]

¶18 There are two versions of WCCA. Members of the public may use the public-access internet WCCA website to view certain case information,

[7] The Wisconsin Court Access System is sometimes referred to as "CCAP." *See, e.g.*, ***Kirk v. Credit Acceptance Corp.***, 2013 WI App 32, ¶5 n.1, 346 Wis. 2d 635, 829 N.W.2d 522. CCAP's Case Management system is also sometimes referred to as "CCAP." For clarity, we use "WCCA" to refer to the Wisconsin Court Access System, and we refer to CCAP's Case Management system by its full name. We use "CCAP" only to refer to the information technology office that provides information technology services to the Wisconsin Court System.

including docket entries, in accordance with Wisconsin's open records law.[8] *Access to the public records of the Wisconsin circuit courts*, WISCONSIN CIRCUIT COURT ACCESS, https://wcca.wicourts.gov (last visited Oct. 12, 2026). The documents identified in the docket entries cannot be viewed in the public-access internet WCCA website. However, documents can be viewed via the courthouse version of WCCA available to circuit courts and to the public on courthouse computers.[9]

¶19 Like the courthouse version of WCCA, the Judicial Dashboard software allows circuit court judges to electronically access circuit court records, including documents, that are maintained in CCAP's Case Management system. *See Consolidated Court Automation Programs (CCAP)*, WISCONSIN COURT SYSTEM, https://www.wicourts.gov/courts/offices/ccap.htm (last visited Oct. 12, 2026); *Judicial Dashboard*, CCAP HELP CENTER (Apr. 20, 2023) (internal training document). The Judicial Dashboard pulls from the same CCAP Case Management system as the courthouse version of WCCA, but the Judicial Dashboard is designed to give judges the ability to manage their caseloads.

[8] "[WCCA] reflects information entered by [the clerk of court, register in probate, or the juvenile court clerk in each county]." ***Kirk***, 346 Wis. 2d 635, ¶5 n.1. *See Access to the public records of the Wisconsin circuit courts*, WISCONSIN CIRCUIT COURT ACCESS, https://wcca.wicourts.gov/ (last visited Oct. 12, 2026) ("The official recordkeepers for the circuit courts are the clerk of [] court, the register in probate, and the juvenile court clerk in each county. The information contained on the WCCA website has been entered by the official recordkeepers in each county.").

[9] The courthouse version of WCCA is a separate web application with different software from the public-access internet WCCA website. *See Courthouse WCCA*, CCAP HELP CENTER (Aug. 26, 2026) (internal training document); *Consolidated Court Automation Programs (CCAP)*, WISCONSIN COURT SYSTEM, https://www.wicourts.gov/courts/offices/ccap.htm (last visited Oct. 12, 2026). *See also* WIS. STAT. § 801.18(9)(e) ("The clerk of court shall make the public portions of the electronic record available for viewing at the clerk of court's office. The clerk of court shall make nonpublic portions of the electronic record available for viewing by authorized persons.").

¶20 It is through the courthouse version of WCCA or the Judicial Dashboard that a circuit court may access electronic versions of documents within CCAP's Case Management system. What this means is that here, when the circuit court accessed the electronic record maintained by the Dane County Clerk of Court, the court was able to, and did, observe not only the docket entries in the prior case but also the documents identified in the docket entries—specifically, the judgment of conviction in the prior case that the State identified by county and case number.

C. Judicial notice of a judgment in another case in an electronic court record under WIS. STAT. § 902.01

¶21 Banks argues that the circuit court erred in taking judicial notice of a record in another case under WIS. STAT. § 902.01. Based on the facts here, we more precisely frame the question as whether the court properly took judicial notice of a judgment in another case in an electronic record. To answer that question, we interpret and apply the language of § 902.01, which governs judicial notice of adjudicative facts.

¶22 WISCONSIN STAT. § 902.01 applies only to adjudicative facts. Pertinent here, "[a]djudicative facts are 'simply the facts of the particular case,' that is, 'who did what, where, when, how, and with what motive or intent.'" ***State v. Harvey***, 2001 WI App 59, ¶7, 242 Wis. 2d 189, 625 N.W.2d 892, *aff'd on other grounds*, 2002 WI 93, 254 Wis. 2d 442, 647 N.W.2d 189 (citation omitted). We accept the State's assertion, which Banks does not dispute, that a prior conviction is an adjudicative fact.

¶23 WISCONSIN STAT. § 902.01(2) specifies that, to be judicially noticed, an adjudicative fact "must be one not subject to reasonable dispute" in that it is

either: "(a) A fact generally known within the territorial jurisdiction of the [circuit] court", or "(b) A fact capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Here, we conclude that a judgment in another case in a circuit court electronic record accessed through the courthouse version of WCCA or through the Judicial Dashboard is "[a] fact capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." *See* § 902.01(2)(b). Accordingly, we do not address subsection (a).

¶24 To understand whether a judgment in another case in an electronic court record is "[a] fact capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned," we examine the recordkeeping practices of circuit courts. *See* WIS. STAT. § 902.01(2)(b). A clerk of court is responsible for maintaining court records. WIS. STAT. § 753.06 (division of circuit courts); WIS. STAT. § 753.30 (establishing clerk of court's record-keeping duties); WIS. STAT. § 59.40(2) (describing a clerk of court's record-keeping duties). The clerk of court must "[f]ile and keep all papers properly deposited with [the clerk] in every action or proceeding." § 59.40(2)(a). In addition, "[t]he papers may be … transferred to … electronic format … and the originals may thereafter be destroyed." § 59.40(2)(a).

¶25 The official record, as maintained by the clerk of court through CCAP's Case Management system, is electronic:

> Given that the official court record is electronic, [CCAP's] [C]ase [M]anagement system is integral to the functioning of Wisconsin's circuit courts. This system creates court notices, summonses, judgments of conviction, driving suspensions, orders for financial disclosure and warrants—all critical in legal proceedings. CCAP Case Management began as the system where clerks recorded information

> contained in the official record, or paper case file; today it is the official record.

Consolidated Court Automation Programs (CCAP), WISCONSIN COURT SYSTEM, https://www.wicourts.gov/courts/offices/ccap.htm. (last visited Oct. 12, 2026). *See* WIS. STAT. § 801.18(9)(a) (electronic documents constitute the official record); § 801.18(9)(b) ("The duties of the clerk of court under [WIS. STAT. §§] 59.40, 851.72, and 851.73, and all other statutes, court rules, and procedures may be fulfilled through proper management of electronic documents as provided in this section.").

¶26 Both versions of WCCA and the Judicial Dashboard interface with CCAP's Case Management system, such that the courthouse version of WCCA and the Judicial Dashboard display the case information and documents contained within the official record. *See Access to the public record of the Wisconsin circuit courts*, WISCONSIN CIRCUIT COURT ACCESS, https://wcca.wicourts.gov (last visited Oct. 26, 2026) (explaining that "[t]he information displayed [in WCCA] is an exact copy of the case information entered into [CCAP's] [C]ase [M]anagement system by court staff in the counties where the case files are located," and "[t]he information contained on [WCCA] has been entered by the official recordkeepers in each county"); *Consolidated Court Automation Programs (CCAP)*, WISCONSIN COURT SYSTEM, https://www.wicourts.gov/courts/offices/ccap.htm. (last visited Oct. 12, 2026) (The Judicial Dashboard provides "access to case information including the full court record[.]").

¶27 Thus, the electronic judgment of conviction that the circuit court here viewed at sentencing was "[a] fact capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." *See* WIS. STAT. § 902.01(2)(b). The circuit court can readily access

documents in other cases through the courthouse version of WCCA and the Judicial Dashboard, and the accuracy of those documents cannot be reasonably questioned because they are identical to documents contained in the official record.

¶28 Banks asserts that no court may ever take judicial notice of a record in another case. Banks does not directly address the statutory language of WIS. STAT. § 902.01 and instead relies on cases that are uninstructive. For example, Banks cites ***Perkins v. State***, 61 Wis. 2d 341, 212 N.W.2d 141 (1973), but acknowledges that the decision in that case concerns whether an appellate court—not a circuit court—has authority to take judicial notice of its own record in another case. ***Id.*** at 346-47 (holding that our supreme court could not take judicial notice of a case not contained within the appellate record). In a separate case, when addressing the judicial notice authority of a circuit court, the supreme court expressly ruled that a circuit court may take judicial notice of its own records in another case. *See* ***Johnson v. Mielke***, 49 Wis. 2d 60, 75, 181 N.W.2d 503 (1970) ("Generally, a [circuit] court may take judicial notice of its own records and proceedings for all proper purposes. This is particularly true when the records are part of an interrelated or connected case, especially where the issues, subject matter, or parties are the same or largely the same.").

¶29 ***Perkins*** is also uninstructive because it predates WIS. STAT. § 902.01 and the existence of readily accessible electronic court records, as do the two cases cited in ***Perkins*** to which Banks also points. *See* ***Perkins***, 61 Wis. 2d at 346-47 (citing ***State v. La Pean***, 247 Wis. 302, 307, 19 N.W.2d 289 (1945), and

State ex rel. Mengel v. Steber, 158 Wis. 309, 311, 149 N.W. 32 (1914)).[10] Not only do ***La Pean*** and ***Mengel*** predate § 902.01 and the existence of electronic court records, but they also focus on the evidentiary basis of judicial notice; they do not provide any reasoning relevant to determining whether an electronic court record of documents in another case is a "kind[] of fact" contemplated by § 902.01(2). *See* ***La Pean***, 247 Wis. at 307-08 (insufficient evidence offered of former plea); ***Mengel***, 158 Wis. at 311 (no evidence offered of prior judgment).

¶30 In sum on this issue, we conclude that a circuit court may take judicial notice of a judgment in another case in the electronic record.[11]

[10] The language in WIS. STAT. § 902.01(2) first took effect on January 1, 1974. S. CT. ORDER, 59 Wis. 2d R1, 23-24 (1973) ("Kind of facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (a) generally known within the territorial jurisdiction of the trial court or (b) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."); *see also* 1999 Wis. Act 85 (renumbering and other minor changes to § 902.01(2)). This language provided a more precise definition of the "verifiable certainty" standard identified in ***Fringer v. Venema***, 26 Wis. 2d 366, 372-73, 132 N.W.2d 565, *mandate amended, reh'g denied*, 26 Wis. 2d 366, 133 N.W.2d 809 (1965). *See* S. CT. ORDER, 59 Wis. 2d R31 (1973). The language was also modeled after the Uniform Rule governing judicial notice; however, the language of § 902.01(2) is not identical to that Uniform Rule, which limited judicial notice of facts to those "so universally known that they cannot reasonably be the subject of dispute" including those "capable of immediate and accurate determination by resort to easily accessible sources of indisputable accuracy." *See* S. CT. ORDER, 59 Wis. 2d R32 (1973).

[11] It does not follow that a circuit court must always take judicial notice of a judgment in another case in an electronic record when requested to do so by a party. For example, an opposing party may make a timely request under WIS. STAT. § 902.01(5) that explains—or the court may independently recognize—specific reasons that would make a document in an electronic record one subject to reasonable dispute and, consequently, not a judicially noticeable fact.

D. Judicial notice of an uncertified electronic copy of a judgment of conviction as proof of a prior conviction under WIS. STAT. § 973.12(1)

¶31 Banks argues that judicial notice of an uncertified copy of a judgment of conviction is not sufficient to prove a prior conviction under WIS. STAT. § 973.12(1).

¶32 WISCONSIN STAT. § 973.12(1) describes how a State may prove repeater status under WIS. STAT. § 939.62. In relevant part, § 973.12(1) provides that:

> If the prior convictions are admitted by the defendant or proved by the [S]tate, [the defendant] shall be subject to sentence under … [§]939.62 unless [the defendant] establishes that [the defendant] was pardoned on grounds of innocence for any crime necessary to constitute [the defendant] a repeater or a persistent repeater. An official report of the F.B.I. or any other governmental agency of the United States or of this or any other state shall be prima facie evidence of any conviction or sentence therein reported. Any sentence so reported shall be deemed prima facie to have been fully served in actual confinement or to have been served for such period of time as is shown or is consistent with the report.

Accordingly, if the defendant does not admit a prior conviction, an official report is one mode of proof the State may use to prove that the prior conviction exists.

¶33 However, an official report is not the only mode of proof that the State may use to prove repeater status. ***State v. Saunders***, 2002 WI 107, ¶26, 255 Wis. 2d 589, 649 N.W.2d 263. For example, "Wisconsin courts have recognized that a certified copy of a judgment of conviction is excellent documentary evidence for proving a prior conviction for purposes of [WIS. STAT.] § 973.12(1)." ***Id.***, ¶24; *see also* ***State v. Flowers***, 221 Wis. 2d 20, 32, 586 N.W.2d 175 (Ct. App. 1998) ("A certified judgment of conviction is the best evidence we can conceive of to show a [circuit] court the existence of a prior felony conviction."); ***State v.***

Farr, 119 Wis. 2d 651, 660, 350 N.W.2d 640 (1984) ("If the defendant stands mute or denies the conviction, a certified copy of it can be presented to the [circuit] court or the case jacket itself may be presented if it is from the same county where sentencing is being done …."); *cf.* ***State v. Koeppen***, 195 Wis. 2d 117, 127, 536 N.W.2d 386 (Ct. App. 1995) (***Koeppen I***) ("[T]he prosecutor did not submit a certified copy of the repeater convictions or an official report specific enough to identify the defendant, the crimes and the date of the convictions.").

¶34 In ***Saunders***, our supreme court explained that WIS. STAT. § 973.12(1) "does not demand that prior convictions be proved through any specific method" and that "the portion of § 973.12(1) that speaks of official government reports constituting prima facie evidence of prior convictions supports the inference that the [S]tate may use other forms of evidence—ones not entitled to prima facie deference—to meet its proof requirements under the subsection." ***Saunders***, 255 Wis. 2d 589, ¶26. The court has more specifically considered whether modes of proof other than an official report or certified judgment of conviction satisfy the requirements of § 973.12(1) in ***Saunders***, 255 Wis. 2d 589, and ***Farr***, 119 Wis. 2d 651. We review the holdings in these two cases and then explain why, taken together, they support our conclusion that a circuit court may take judicial notice of an uncertified electronic copy of a judgment of conviction as sufficient proof of the conviction to establish a defendant's repeater status.

¶35 In ***Saunders***, our supreme court concluded that an uncertified copy of a judgment of conviction proved a defendant's repeater status. ***Saunders***, 255 Wis. 2d 589, ¶70. As the court explained, the fact "[t]hat a certified copy of a judgment of conviction is the 'best evidence' does not connote that certified copies are the only copies that may be used." ***Id.***, ¶24. The court further explained that the primary concern is "the accuracy of details about the conviction." ***Id.***, ¶42.

The ***Saunders*** court noted that if the uncertified copy of the judgment of conviction offered by the State contains inaccurate information, then the defendant should object, which "would advise the court of the defendant's concern and permit the [S]tate to take remedial action." ***Id.***, ¶29. However, the court cautioned that a lack of objection to the mode of proof does not relieve the State of its burden to prove the existence and date of the prior conviction beyond a reasonable doubt. ***Id.***, ¶¶51, 63. Ultimately, the court concluded that the uncertified copy of the judgment of conviction in that case contained the requisite information from which the circuit court could conclude that the defendant was a repeater. ***Id.***, ¶59.

¶36 In ***Farr***, our supreme court concluded that a probation report which did not provide the dates of the prior convictions was not an official report under the meaning of WIS. STAT. § 973.12(1). ***Farr***, 119 Wis. 2d at 657-58. Because the probation report did not include the dates, the probation report "left to conjecture" whether the convictions occurred within the time period required for the enhanced penalty. ***Id.*** The ***Farr*** court explained that to be an official report, "the report must contain relevant information regarding the issue of repeater status and must specifically include the date of conviction for the previous offense." ***Id.*** at 658.

¶37 Based on this line of cases interpreting WIS. STAT. § 973.12(1), we reject Banks's argument that an uncertified electronic copy of a judgment of conviction may never prove repeater status. What is essential to the mode of proof is that it allows the circuit court to verify the existence and date of a prior conviction; an electronic format does not necessarily preclude a court from doing so. Rather, as the facts stated above show, the court here was able to verify the existence and date of the prior conviction based on its observation of the

uncertified electronic copy of the judgment of conviction in the prior case, sufficient to meet the proof requirements of § 973.12(1).

¶38 Banks argues to the contrary, citing ***State v. Bonds***, 2006 WI 83, 292 Wis. 2d 344, 717 N.W.2d 133. In ***Bonds***, our supreme court ruled that a "CCAP report" generated by CCAP's Case Management system and accessed through the public-access internet WCCA website was not sufficient evidence to prove a prior conviction.[12] ***Id.***, ¶49. The court, referencing the 2006 version of the public-access internet WCCA website that included a disclaimer about CCAP's Case Management system's potential inaccuracy, concluded that:

> [A] CCAP report, by its own terms, is of questionable accuracy. It is not the official record of a criminal case, as the clerks of court for each county are the officials responsible for those records. WIS. STAT. § 59.40(2)(c). And, a CCAP report is not a copy of the actual judgment of conviction.… The disclaimer with which a CCAP report is conditioned causes us to have reasonable doubt about its accuracy.

Id., ¶46. The court further explained that "[CCAP's Case Management system] records are not like uncertified copies of judgments in that CCAP reports do not purport to be identical to the court records, as photocopies do" and that "[w]ith a CCAP report, the question is whether the report is an accurate narration of the judgment of conviction of a particular defendant, for a particular crime, on a particular date." ***Id.***, ¶¶45, 49.

¶39 The holding in ***Bonds***, 292 Wis. 2d 344, is specific to reports obtained through the public-access internet WCCA website and is of limited value

[12] The majority in ***State v. Bonds***, 2006 WI 83, ¶6, 292 Wis. 2d 344, 717 N.W.2d 133, uses "CCAP" to refer to CCAP's Case Management system database and not, as we do here, to the information technology office that services the Wisconsin Court System.

for at least the following reasons. As we have explained, there are two versions of WCCA: the public-access internet WCCA website and the courthouse version of WCCA. Documents are available on the courthouse version of WCCA, but not on the public-access internet WCCA website. Here, the circuit court viewed an electronic copy of the judgment of conviction through either the courthouse version of WCCA or the Judicial Dashboard software, and not a report or other summary about the judgment of conviction available through the public-access internet WCCA website.[13]

¶40 The electronic copy of the judgment of conviction here is akin to the uncertified judgment of conviction in ***Saunders***. Like an uncertified judgment of conviction, and unlike the documents in ***Farr*** and ***Bonds***, the electronic copy of Banks's prior conviction in the electronic record maintained by the Dane County Clerk of Courts office is an identical copy of—and not a summary of—the conviction. While the electronic copy of the judgment of conviction is not included in the appellate record, the hearing transcript contains a detailed narration of the electronic judgment of conviction that the circuit court viewed. Specifically, the transcript demonstrates that the court: (1) identified the case number and name; (2) identified a file from that case as a judgment of conviction; (3) identified the date of the judgment of conviction; (4) identified the exact count and type of felony; and (5) explained that the record was maintained by the Dane

[13] In addition, the description of technology provided throughout ***Bonds*** is outdated. CCAP's Case Management system, on which the information in WCCA depends, has evolved since 2006; as explained above, CCAP's Case Management system now constitutes the official record. Accordingly, the disclaimer cited in ***State v. Bonds***, 292 Wis. 2d 344, ¶¶7, 46, is no longer present on the public-access internet WCCA website. *See Access to the public records of the Wisconsin circuit courts*, WISCONSIN CIRCUIT COURT ACCESS, https://wcca.wicourts.gov/ (last visited Oct. 12, 2026).

County Clerk of Court. Accordingly, the court's narration demonstrates that the electronic copy of the judgment of conviction substantiates both the existence of the conviction and the date of the conviction as required by WIS. STAT. § 973.12(1) and ***Farr***. *See* ***Farr***, 119 Wis. 2d at 658.

¶41 Banks also cites ***State v. Koeppen***, 2000 WI App 121, 237 Wis. 2d 418, 614 N.W.2d 530 (***Koeppen II***). In ***Koeppen II***, we concluded that the State proved repeater status, even though the judgment of conviction was not entered into the record, because the record showed "[t]he State offered certified judgments of conviction as permitted by WIS. STAT. § 973.12(1), the court took judicial notice of the judgments and Koeppen never objected to the documents or the procedure." ***Koeppen II***, 237 Wis. 2d 418, ¶37. However, ***Koeppen II*** does not stand for the rule, as asserted by Banks, that the State must provide a physical copy of a prior conviction to prove a defendant's repeater status. As we have explained, under the case law cited above, an electronic copy of a judgment of conviction may be an appropriate mode of proof to prove a defendant's repeater status under § 973.12(1); and here, that mode of proof satisfied § 973.12(1) based on the circuit court's detailed narration of the document's contents that verified the existence and date of the prior conviction.

¶42 Our supreme court has noted that, generally, the better practice is for the State to provide a certified judgment of conviction. *See* ***Saunders***, 255 Wis. 2d 589, ¶70. However, under the facts here, judicial notice of the uncertified electronic copy of the judgment of conviction in the electronic record suffices to prove the prior conviction under WIS. STAT. § 973.12(1).

E. Necessary information for judicial notice under WIS. STAT. § 902.01(4)

¶43 Under WIS. STAT. § 902.01(4), "[a] judge or court shall take judicial notice if requested by a party and supplied with the necessary information." The statute does not define "necessary information" or specify what documentation, if any, must be supplied to the circuit court. However, using the commonly understood meanings of the words "necessary" and "information," the statute requires that here the State provide sufficient evidence to enable the court to locate and to observe in the electronic record the copy of the judgment of conviction in the prior case. *See* ***State v. Salinas***, 2016 WI 44, ¶45, 369 Wis. 2d 9, 879 N.W.2d 609 (stating it is not necessary to provide a particular definition for "common words with known meanings").

¶44 As stated, the State provided the circuit court with the county and case number of the case in which the prior judgment of conviction was entered. The court used that information to locate and observe the electronic copy of the judgment of conviction by accessing the electronic record maintained by the Dane County Clerk of Court in the prior case. Due to the nature of a judgment of conviction, its existence proves beyond a reasonable doubt that Banks was convicted of a prior qualifying offense under WIS. STAT. § 973.12(1). Banks does not dispute that the information provided by the State was sufficient to enable the court to locate the prior judgment of conviction for purposes of taking judicial notice. Rather, he argues that the uncertified electronic copy of the judgment of conviction is not sufficient to prove the prior conviction under § 973.12(1), and we have explained why that argument fails.

¶45 In sum on this issue, for the reasons stated, we reject Banks's challenge to the sufficiency of the evidence of his prior conviction directed at the State's mode of proof of that conviction.

III. Ineffective Assistance of Counsel

¶46 In the alternative, Banks argues that trial counsel was constitutionally ineffective by failing to move to dismiss the persistent repeater enhancer in the refiled criminal complaint, and failing to object to the circuit court taking judicial notice of Banks's prior conviction. We review whether Banks's postconviction motion alleges sufficient grounds to entitle Banks to a ***Machner*** hearing. *See* ***State v. Allen***, 2004 WI 106, ¶9, 274 Wis. 2d 568, 682 N.W.2d 433 ("If the motion raises such facts, the circuit court must hold an evidentiary hearing.").

¶47 We review de novo whether the postconviction motion entitles a defendant to a ***Machner*** hearing—that is, whether the motion "on its face alleges sufficient material facts that, if true, would entitle the defendant to relief." ***Allen***, 274 Wis. 2d 568, ¶9. At a minimum, the postconviction motion must "'state with particularity the [factual and legal] grounds for the motion.'" ***Id.***, ¶10 (quoting WIS. STAT. § 971.30(2)(c)). A motion is not sufficient "if the record conclusively demonstrates that the defendant is not entitled to relief." ***Allen***, 274 Wis. 2d 568, ¶9.

¶48 For Banks's postconviction motion to succeed on an ineffective assistance of counsel claim, the postconviction motion must allege sufficient grounds to satisfy the two-prong test established in ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). The motion must demonstrate "that counsel's performance was deficient" and "that the deficient performance prejudiced the defense." ***Id.***

To show deficient performance, "the defendant must show that counsel's representation fell below an objective standard of reasonableness." ***Id.*** at 687-88. To show prejudice, the defendant must affirmatively prove that the alleged deficiency in counsel's performance had an adverse effect on the defense. ***Id.*** at 693. It is not enough to show that the defect had some conceivable effect on the outcome. Rather, "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." ***Id.*** at 694. A court need not address both prongs "if the defendant makes an insufficient showing on one." ***Id.*** at 697.

A. Failing to move to dismiss the persistent repeater enhancer in the refiled criminal complaint

¶49 Banks alleges in his postconviction motion that trial counsel was ineffective for failing to dismiss the persistent repeater enhancer in the refiled criminal complaint.

¶50 Banks alleges in his postconviction motion that trial counsel performed deficiently in not moving to dismiss the persistent repeater enhancer because the State was, as a matter of law, barred from refiling the charge with the enhancer. Banks alleges that he was prejudiced by this deficient performance because the circuit court would have granted the motion to dismiss, or, if the court denied the motion to dismiss, trial counsel would have developed the record on the issue and preserved it on direct appeal. In support of his claim, Banks cites WIS. STAT. § 973.12(1); ***State v. Martin***, 162 Wis. 2d 883, 470 N.W.2d 900 (1991); and ***State v. Larsen***, 177 Wis. 2d 835, 503 N.W.2d 359 (Ct. App. 1993). As we explain, this legal authority does not support his claim.

¶51 WISCONSIN STAT. § 973.12(1) governs the procedure for including in a criminal complaint a persistent repeater enhancer based on a prior conviction. Under § 973.12(1), a criminal complaint may include or be amended to include the prior conviction "any time before or at arraignment, and before acceptance of any plea." In ***Martin***, our supreme court concluded that under § 973.12(1), a complaint may not be amended for the purposes of adding "a repeater allegation after a defendant has pleaded not guilty to the underlying charges at arraignment." ***Martin***, 162 Wis. 2d at 891, 907. However, the court also noted that the State may have "other remedies" available—such as moving to dismiss a criminal complaint and refiling the complaint with a repeater allegation. ***Id.*** at 903 n.15 (citing ***State v. Waldman***, 57 Wis. 2d 234, 203 N.W.2d 691 (1973)).

¶52 This court affirmed just such an alternative remedy in ***Larsen***. In that case, we rejected Larsen's argument that the circuit court erred in granting the State's motion to dismiss so the State could refile the charges with repeater enhancers after discovering that it had misspelled Larsen's name when searching for prior convictions. ***Larsen***, 177 Wis. 2d at 837-38, 841. We clarified that WIS. STAT. § 973.12(1) and ***Martin*** do not "preclude the [S]tate, as a matter of law, from seeking a dismissal without prejudice in order to file a new complaint which adds a repeater allegation." ***Larsen***, 177 Wis. 2d at 838-40. We explained that refiling charges that have been dismissed after arraignment—unlike amending an existing charge after arraignment—does not "sandbag" a defendant or bind the defendant to the plea made at arraignment on the initial criminal complaint. ***Id.*** at 839-40. That is, the defendant knew what the defendant was pleading to before the initial complaint without the enhancer was dismissed, and the defendant knows what the defendant is pleading to when the charge has been refiled with the enhancer. Accordingly, "the purposes behind [§ 973.12] are served" when the

State refiles, rather than amends, a complaint after arraignment and a plea in the initial case. ***Id.*** at 840.

¶53 Extending the logic of ***Larsen*** to the facts here, the purposes behind WIS. STAT. § 973.12(1) were served, and the refiled complaint did not "sandbag" Banks, when the circuit court dismissed the initial criminal complaint without the enhancer and the State refiled the complaint with the enhancer. The refiled criminal complaint alleged the prior conviction with the repeater enhancer before arraignment and before Banks accepted any plea in this proceeding. Like the defendant in ***Larsen***, and in contrast to ***Martin***, Banks was not bound to a former plea on the dismissed complaint and was free to "enter a fresh plea with full awareness of the possible punishment." ***Larsen***, 177 Wis. 2d at 840. Consequently, neither § 973.12(1) nor ***Martin*** nor ***Larsen*** provide a legal basis for a motion to dismiss the enhancer in the refiled criminal complaint, and Banks identifies no other legal authority providing such a basis. In other words, Banks's postconviction motion fails to show that the circuit court was required to dismiss the persistent repeater enhancer "as a matter of law." *See* ***id.*** at 838-40.

¶54 Accordingly, Banks's postconviction motion does not provide sufficient legal grounds to show that a motion to dismiss would have merit. "Trial counsel's failure to bring a meritless motion does not constitute deficient performance." ***State v. Swinson***, 2003 WI App 45, ¶59, 261 Wis. 2d 633, 660 N.W.2d 12. We conclude that Banks's postconviction motion does not entitle him to a ***Machner*** hearing based on the claim that trial counsel was ineffective for failing to move to dismiss the persistent repeater enhancer in the State's refiled criminal complaint.

B. Failing to object to circuit court taking judicial notice of prior conviction

¶55 Banks alleges in his postconviction motion that trial counsel was ineffective for failing to object to the circuit court taking judicial notice of Banks's prior conviction using an uncertified electronic copy of a judgment of conviction as proof for application of the persistent repeater enhancer. We resolve this claim based on the record conclusively showing that this alleged error did not prejudice Banks.

¶56 We have determined that the circuit court did not err when it took judicial notice of an electronic copy of the judgment of conviction, and the court could have overruled an objection. But even if the court was uncertain about the propriety of taking judicial notice under these facts, the end result would not have changed. As the court explained, "Even if trial counsel's best practice would have been to object to the [c]ourt taking judicial notice after viewing the actual judgment of conviction as stored in the electronic records, the remedy at the time during the sentencing hearing would have been a delay while the State obtained a certified copy of the judgment of conviction." Accordingly, an objection would not have changed the outcome of the proceeding: it is undisputed that the State could have obtained a certified judgment of conviction as an alternative to relying on judicial notice of the electronic copy of the judgment of conviction. Accordingly, the record indicates that an objection would have resulted in the State obtaining a certified copy, and the court would have imposed the same life sentence under WIS. STAT. § 939.62(2m)(c).[14]

[14] In other instances where a certified judgment of conviction is not readily available, the circuit court might decline to take judicial notice, explain why it was doing so, and decline to apply the enhancer based on the State's failure to meet its burden. Those facts are not before us.

¶57 Banks argues on appeal that he was prejudiced because the appellate record does not include the prior judgment of conviction and so, "[t]here is simply no way for this Court to verify Mr. Banks's conviction without going outside the record." However, Banks does not allege in his motion, and does not argue on appeal, that the circuit court's narration of the contents of the electronic copy of the judgment of conviction—which is in the record—is inaccurate. While the electronic copy of the judgment of conviction viewed by the court is not contained within the appellate record, Banks does not show that its contents as narrated by the court on the record are inaccurate or insufficient to prove the prior conviction.

¶58 We conclude that Banks's postconviction motion does not entitle him to a ***Machner*** hearing based on the claim that trial counsel was ineffective for failing to object to the circuit court taking judicial notice of his prior conviction.

CONCLUSION

¶59 For the reasons set forth above, we affirm the circuit court's order denying Banks's postconviction motion.

By the Court.—Judgment and order affirmed.

Recommended for publication in the official reports.