COURT OF APPEALS
DECISION
DATED AND FILED

July 30, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

Nos. 97-3585-CR
97-3586-CR
97-3587-CR
97-3588-CR
97-3589-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

PATRICK C. WEBSTER,

DEFENDANT-APPELLANT.

APPEAL from judgments and an order of the circuit court for Dane County: PATRICK J. FIEDLER, Judge. *Affirmed.*

Before Eich, C.J., Vergeront and Deininger, JJ.

PER CURIAM. Patrick Webster appeals from judgments convicting him on several felony and misdemeanor counts. He also appeals from

an order denying postconviction relief. The issues concern whether the trial court properly sentenced him as a repeater on one of the felony counts and two of the misdemeanor counts. We reject his arguments and affirm.

In Dane County case no. 95-CF-349, the State charged Webster, as a repeater, with a theft by fraud committed in November 1994. The State based the repeater allegation on a prior felony conviction from December 1986. At Webster's plea hearing, the State introduced a record of the Wisconsin Criminal Investigation Bureau (WCIB) showing the prior conviction, and a three and one-half year prison term Webster served between November 1987 and April 1991. Webster's counsel acknowledged that he had received a copy of the report before the hearing. Webster admitted the prior conviction. The court sentenced him to probation in March 1995.

In Dane County case no. 96-CF-941, Webster pleaded guilty, as a repeater, to issuing a worthless check. In Dane County case no. 96-CF-997, he pleaded guilty to misdemeanor theft, as a repeater. In each of these cases, the State based the repeater allegation on a February 1996 felony conviction.

After Webster's revocation in case no. 95-CF-349, the cases were consolidated for sentencing. Webster received consecutive sentences totaling sixteen years on several counts, including enhanced four-year, three-year and one-year sentences as a repeater.

Webster first argues that the State failed to adequately prove his repeater status in 95-CF-349. We disagree. Section 939.62, STATS., provides that

an actor is a repeater if convicted of a felony within five years of the charged act, not counting time spent in actual confinement. To prove repeater status,

> An official report ... of this ... 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 over such period of time as is shown or is consistent with the report.

Section 973.12, STATS. Here, the WCIB report shows the prior conviction, which Webster admitted and also shows that he subsequently served a three and one-half year prison sentence that made his prior conviction within five years for repeater purposes. Webster received a copy of the report before the hearing and then heard the prosecutor describe his record from that report at the hearing, but chose not to contest its accuracy.

Webster next argues that the trial court erroneously exercised its sentencing discretion because it did not first explain its reasons for imposing the maximum sentences, on the three counts, and then separately and independently explain why it was enhancing them. The case Webster cites, ***State v. Harris***, 119 Wis.2d 612, 350 N.W.2d 633, (1984), does not stand for the proposition that the trial court must provide a two-step analysis when sentencing the defendant as a repeater. Nor are we aware of any other case with that holding. ***Harris*** merely concludes that the trial court may or may not sentence the defendant as a repeater, and may do so only after finding that the defendant is in fact a repeater. ***Id.*** at 619-20, 350 N.W.2d at 637. The trial court did so here. Additionally, the court relied on proper factors, sentenced Webster well within the maximum allowed by statute, and explained its rationale on the record. It therefore properly exercised

its sentencing discretion. ***State v. Krueger***, 119 Wis.2d 327, 336-37, 351 N.W.2d 738, 743 (Ct. App. 1984).

Webster also contends on appeal that the trial court improperly denied his postconviction motion without an evidentiary hearing. The motion sought a modified sentence, based on Webster's erroneous interpretation of ***Harris***. The trial court denied relief as a matter of law, based on facts already of record. Therefore, an evidentiary hearing was unnecessary.

Finally, Webster contends in his reply brief that where a defendant appears before the court for sentencing on several counts, the trial court must impose a total maximum sentence before imposing an enhancer on any individual count. We need not address issues first raised in a reply brief. ***In re Bilsie***, 100 Wis.2d 342, 346 n.2, 302 N.W.2d 508, 512 (Ct. App. 1981).

By the Court.—Judgments and order affirmed.

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