

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 30, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

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.

No. 00-1849-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DARRYL H. STEGALL,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
JEFFREY A. CONEN, Judge. *Affirmed.*

¶1 SCHUDSON, J.¹ Darryl H. Stegall, *pro se*, appeals from the circuit court order denying his motion for sentence modification, following his guilty plea

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f), (3) (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

to retail theft, with the habitual criminality penalty enhancer. He does not challenge the retail theft conviction, but asks this court to review the circuit court's "method in finding [him] ... to be a Habitual Criminal." Stegall argues that he "never admitted directly or specifically" to prior convictions supporting a finding of habitual criminality. This court, however, concludes that Stegall did so, and that the record supports the circuit court's finding of habitual criminality. Accordingly, this court affirms.

¶2 As the State concedes, a portion of the plea colloquy relating to the factual basis for the finding of habitual criminality "wasn't as complete or articulate as one might wish." The complete plea colloquy, however, establishes the factual basis for the finding of habitual criminality as well as Stegall's acceptance of that factual basis.

¶3 The guilty plea hearing included the following:

THE COURT: All right. Let's go through the facts in each of these cases very briefly.

[DEFENSE COUNSEL]: Your Honor, the defendant does stipulate to the contents of the Complaint for purposes of the plea.

THE COURT: All right. Well, let me just get them from him briefly. I want to go through everything at length. With regard to the case ending in 461, that's the Kohl's case, habitual criminality, is everything in the Criminal Complaint true and correct?

DARRYL STEGALL: Yes.

THE COURT: All right. And you stole a toothbrush and vitamins—about \$27.00 worth of items?

DARRYL STEGALL: Yes.

THE COURT: You also understand, sir, the habitual criminality penalty enhancer and, what that does, that adds time as a maximum. Do you understand that?

DARRYL STEGALL: Yes.

THE COURT: And in order for us to get to that, there has to be a conviction on your record for either one felony or three misdemeanors within the last five years. Do you understand that?

DARRYL STEGALL: Yes.

THE COURT: And it appears that there are a couple of cases that date back to 1994 that you had been convicted of in the past, one being retail theft in December of 1994, correct?

DARRYL STEGALL: If you say. I don't, so really—

THE COURT: There's a judgment of conviction. You don't have any problem with that? If there's a judgment of conviction, you believe that's true?

DARRYL STEGALL: Yeah.

THE COURT: All right. And there's also two convictions on December 22, 1994, one for retail theft and one for battery, and there's a judgment of conviction that's attached. Have you had an opportunity to look at all of that that's attached to the judgments of conviction?

DARRYL STEGALL: Not really, but I understand it.

THE COURT: All right, and that's—you don't believe that that's been overturned by the Court of Appeals at all?

DARRYL STEGALL: No.

THE COURT: Those are still valid judgments against you?

DARRYL STEGALL: No, I understand that.

¶4 Certified copies of the two judgments of conviction for the three prior offenses were attached to the criminal complaint. Additionally, defense counsel confirmed both the validity of the complaint and the habitual criminality penalty enhancer, and Stegall's understanding of them:

THE COURT: And have you [defense counsel] discussed the elements of each of the offenses with [Stegall]?

[DEFENSE COUNSEL]: Yes.

THE COURT: And the maximum penalties?

[DEFENSE COUNSEL]: Yes.

THE COURT: And the facts in each of these cases, you've discussed those at length?

[DEFENSE COUNSEL]: Yes, I have.

THE COURT: And you've also had an investigator ... on this case and he's also done some investigation into the facts and discussed those facts with Mr. Stegall?

[DEFENSE COUNSEL]: Yes.

THE COURT: And have you discussed the habitual criminality penalty enhancer with him?

[DEFENSE COUNSEL]: Yes, I have, Your Honor.

THE COURT: And you believe there's an adequate factual basis for the pleas as well as the habitual criminality penalty enhancer?

[DEFENSE COUNSEL]: Yes.

THE COURT: And you stipulate to all of the Criminal Complaints as a factual basis?

[DEFENSE COUNSEL]: Yes.

THE COURT: And you believe that the prior offenses are of record and unreversed at this time?

[DEFENSE COUNSEL]: I have checked that. From what I can tell, they are.

Accordingly, the court found that Stegall had "three prior convictions for misdemeanors within the last five years and that those convictions remain of record and ... unreversed at this time."

¶5 A defendant may be sentenced as a habitual criminal if he or she is a "repeater" as defined by WIS. STAT. § 939.62(2), which provides, in relevant part, that a "repeater" is one who "was convicted of a misdemeanor on 3 separate occasions during [the 5-year period immediately preceding the commission of the crime for which he is being sentenced], which convictions remain of record and unreversed."² Generally, a defendant may be sentenced as a repeater if "the prior

² The language "convicted of a misdemeanor on 3 separate occasions," as utilized by WIS. STAT. § 939.62(2), requires only three misdemeanor convictions, not three separate court

(continued)

convictions are admitted by the defendant or proved by the state.” WIS. STAT. § 973.12(1).

¶6 Whether a defendant’s plea establishes the factual basis satisfying the criteria under WIS. STAT. § 973.12(1) is determined “[b]ased upon the totality of the record.” *State v. Liebnitz*, 231 Wis. 2d 272, 275, 603 N.W.2d 208 (1999). Reviewing the trial court’s determination of whether the criteria have been satisfied, this court applies the statute to the undisputed factual record and makes that determination *de novo*. *Id.* at 283.

¶7 In *Liebnitz*, the supreme court concluded that even absent the defendant’s explicit admission to the prior convictions, and even absent the State’s separate proof of the prior convictions, a defendant’s plea of no contest satisfied the requirements of WIS. STAT. § 973.12(1) where the complaint contained the allegations of the specific prior offenses constituting the basis for the repeater allegation. *Id.* at 276-80, 287-88; *see also State v. Rachwal*, 159 Wis. 2d 494, 509, 465 N.W.2d 490 (1991) (“[W]hat is admitted by a guilty or no contest plea is all the material facts alleged in the charging document.”). In the instant case, the record reflects satisfaction of the statutory requirements.

¶8 The “touchstone of the admission component” of WIS. STAT. § 973.12(1) is that a court’s colloquy “obtain [the defendant’s] express understanding that the repeater allegations increased the possible penalties.” *State v. Goldstein*, 182 Wis. 2d 251, 256-57, 513 N.W.2d 631 (Ct. App. 1994). Here, the court began the plea colloquy by informing Stegall of the charge that included the penalty enhancer. The court then questioned him:

appearances. *State v. Wittrock*, 119 Wis. 2d 664, 666, 674, 350 N.W.2d 647 (1984).

THE COURT: ... Do you understand that charge, sir?

DARRYL STEGALL: Yes, I do.

THE COURT: That carries a maximum penalty of a fine of not more than \$10,000 and, because it's charged with a habitual criminality penalty enhancer, the maximum incarceration time is three years in the Wisconsin State Prison System. Do you understand that?

DARRYL STEGALL: Yes.

This initial questioning, in combination with the court's subsequent questioning of Stegall and defense counsel, *see* ¶¶3-4, secured Stegall's "express understanding that the repeater allegations increased the possible penalties."

¶9 Thus, this court concludes, although some of Stegall's answers, read in isolation, would allow for doubt about his understanding, the record as a whole confirms the certainty of Stegall's understanding of and admission to his status as a habitual criminal.

By the Court.—Order affirmed.

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

