

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 31, 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. 00-2282-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MICHAEL A. CARBINE,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Washington County: LEO F. SCHLAEFER, Judge. *Affirmed.*

¶1 SNYDER, J.¹ Michael A. Carbine appeals from a conviction for violating WIS. STAT. § 346.63(1)(a), operating a motor vehicle while under the

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

influence of an intoxicant (OMVWI), fourth offense. Carbine argues that his pleas to the first and third OMVWI offenses were constitutionally defective and therefore invalid for purposes of sentence enhancement pursuant to WIS. STAT. § 346.65(2)(d). Carbine contends that his motion to collaterally attack the prior convictions was wrongly denied. Because *State v. Hahn*, 2000 WI 118, 238 Wis.2d 889, 618 N.W.2d 528, is dispositive, we affirm the judgment of conviction and the order.

FACTS

¶2 On April 30, 1999, Carbine was charged with OMVWI and with a prohibited blood alcohol concentration as a fourth offense. Carbine's three prior offenses occurred on February 25, 1990, in Milwaukee county; August 12, 1994, in Milwaukee county; and November 23, 1996, in Trempealeau county. He had been convicted of these three offenses on May 8, 1990; September 12, 1994; and August 19, 1997, respectively.

¶3 On December 22, 1999, Carbine filed a motion to preclude consideration of the first Milwaukee county conviction and the Trempealeau county conviction for penalty enhancement purposes. In each instance, Carbine alleged, the plea colloquy before the court was constitutionally defective because the court had failed to adequately ascertain if he had an understanding of the elements of the offense. A hearing was held on this motion on January 3, 2000. The trial court denied the motion, and Carbine appeals from this order and the judgment of conviction.

DISCUSSION

¶4 This appeal involves the application of constitutional standards to undisputed facts, a question of law which we review de novo. *State v. Foust*, 214 Wis. 2d 568, 571-72, 570 N.W.2d 905 (Ct. App. 1997).

¶5 Carbine argues that he should have been allowed to collaterally attack his prior convictions because his pleas were constitutionally defective. He cites to *State v. Baker*, 169 Wis. 2d 49, 485 N.W.2d 237 (1992), and *State v. Bangert*, 131 Wis. 2d 246, 389 N.W.2d 12 (1986), in support of his arguments.

¶6 However, *Hahn*, released November 1, 2000, invalidates Carbine's arguments. In *Hahn*, the Wisconsin Supreme Court limited the holding of *Baker* and held that an offender does not have a constitutional right to collaterally challenge a prior conviction except when the offender alleges that he or she was denied his or her constitutional right to counsel in the prior conviction. *Hahn*, 2000 WI 118 at ¶¶28-29.

¶7 Here, Carbine was represented by counsel during both of his challenged prior proceedings. During his 1990 plea in Milwaukee county, Carbine was represented by Attorney David Gruber; and during his 1997 plea in Trempealeau county, he was represented by Attorney Michael R. Cohen. Because Carbine was represented by counsel in both of these proceedings, pursuant to *Hahn*, his present collateral challenge to these convictions is barred.

CONCLUSION

¶8 Because Carbine was represented by counsel during the 1990 Milwaukee county and the 1997 Trempealeau county proceedings, he has no constitutional right to collaterally challenge these convictions. We therefore affirm the judgment of conviction and the order.

By the Court.—Judgment and order affirmed.

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

