

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

December 21, 2000

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. 00-2523-CR**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**ANDREW M. OBRIECHT,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Dane County: ROBERT A. DeCHAMBEAU, Judge. *Reversed and cause remanded.*

¶1 ROGGENSACK, J.<sup>1</sup> Andrew Obrieht appeals a judgment of conviction and an order denying postconviction relief. Obrieht was convicted of

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (1997-98). Additionally, all further references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

violating WIS. STAT. § 947.012(1)(b), a Class B misdemeanor. Section 947.012(1). Obrieht received a nine-month sentence, concurrent to a sentence for a separate violation of the unlawful use of a telephone. He contends that the maximum period of incarceration for a Class B misdemeanor is ninety days. He moved the circuit court for postconviction relief, citing WIS. STAT. § 939.51(3)(b), and his motion was denied.

¶2 The State agrees that the maximum period of incarceration for a Class B misdemeanor is ninety days. WISCONSIN STAT. § 939.51(3)(b) states in relevant part:

(3) Penalties for misdemeanors are as follows:

...

(b) For a Class B misdemeanor, a fine not to exceed \$1,000 or imprisonment not to exceed 90 days, or both.

Because Obrieht was convicted of a violation of WIS. STAT. § 947.012(1)(b), which states on its face that it is a Class B misdemeanor, and because § 939.51(3)(b) states the maximum penalty for a Class B misdemeanor, we conclude that Obrieht's contention on appeal is meritorious, as is the State's confession of error.<sup>2</sup>

¶3 Therefore, we conclude that the judgment of conviction must be vacated, and the cause is remanded for the circuit court to enter an amended judgment with sentencing not to exceed ninety days' incarceration.

*By the Court.*—Judgment and order reversed and cause remanded.

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<sup>2</sup> This court greatly appreciates the candor of the State in its brief in regard to the confession of error.

This opinion will not be published. WISCONSIN STAT. RULE  
809.23(1)(b)4.

