COURT OF APPEALS
DECISION
DATED AND RELEASED

March 27, 1996

No. 95-3013-CR

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

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

MICHAEL VINES,

Defendant-Appellant.

APPEAL from a judgment and an order of the circuit court for Kenosha County: BARBARA A. KLUKA and ROBERT V. BAKER, Judges. *Affirmed*.

BROWN, J. Michael Vines challenges the habitual criminality enhancer of his sentence. He maintains that the State did not meet its burden of proof with regard to his prior convictions. Because we conclude that the record sufficiently establishes his admission to past crimes and periods of confinement, we uphold his sentence.

The facts are settled. On December 7, 1994, the State charged Vines with disorderly conduct. The complaint also alleged that Vines was subject to an additional sanction as a repeat offender. *See* § 939.62, STATS.

By the following February, Vines and the State reached a plea agreement. Through his attorney, Vines informed the trial court[1] that he would plea no contest to the disorderly conduct charge and admit to the repeater allegation. At that hearing, the trial court began a colloquy and eventually accepted Vines's no contest plea.

The trial court also inquired into Vines's past criminal charges. The exchange between Vines and the trial court went as follows:

> THE COURT: I'm going to ask you about these underlying offenses and whether this information is correct. Were you convicted on February 28, 1989 of three charges of misdemeanor retail theft here in Kenosha County?
>
> [VINES]: Yes, I was.
>
> ….
>
> THE COURT: And is the other information in the complaint concerning your imprisonment, your release on February 27, 1990; your re-incarceration on December 7, 1990, your release on April 14, 1990; and your re-imprisonment on October 1, 1992 until you were paroled on April 30, 1993; is that all correct?
>
> [VINES]: Yes.

[1] The Honorable Barbara A. Kluka, presiding.

> THE COURT: Okay. I will accept your no contest plea. Find that it's entered freely, voluntarily and intelligently with the advice of competent counsel. Find there's a factual basis in the complaint for acceptance of your plea, as well as for the underlying prior convictions which are acknowledged here on the record, and adjudge you guilty of violating Sections 947.01 and 939.62 of the Statutes.

On appeal, and in an unsuccessful postverdict motion,[2] Vines claims that the record excerpted above "failed to establish the habitual criminal allegations in the complaint *with reasonable certainty*." (Emphasis added.) Whether the undisputed record satisfies the mandates of § 973.12, STATS., (the repeater sentencing rules) presents a question of law which we review de novo. ***State v. Theriault***, 187 Wis.2d 125, 131, 522 N.W.2d 254, 257 (Ct. App. 1994).

In substance, Vines argues that certain errors in the trial court's statements left him uncertain about whether his convictions would fit into the five-year lookback period within § 939.62, STATS. Since his February 1989 crimes were outside of this five-year window, how his subsequent periods of confinement figured into the analysis was crucial to the validity of the repeater enhancer.

Building his claim, Vines also points to three problems with the colloquy which he claims raise a doubt over whether the State proved these convictions. Although the trial court tried to verify that Vines was released on February 27, 1990, it did not specifically recite when he was originally

[2] The Honorable Robert V. Baker, presiding.

incarcerated. Second, the trial court misstated that Vines was released from his second period of confinement on April 14, "199**0**" not "199**2.**" (Emphasis added.) Third, Vines asserts that the trial court's interchangeable use of the terms "imprisonment," "re-incarceration" and "re-imprisonment" confused him over whether all three constituted "*the service of criminal sentences*." (Emphasis added.) Additionally, he cites ***State v. Zimmerman***, 185 Wis.2d 549, 558, 518 N.W.2d 303, 306 (Ct. App. 1994), where we cautioned that "common sense readings" are not a substitute for exacting proof in these circumstances.

We nonetheless reject Vines's challenge to the sufficiency of the record. Here, we face a defendant who *admitted* to his prior convictions. Although the trial court misstated some dates and made other technical errors, the colloquy reveals that it was ultimately concerned with whether Vines was willing to admit to the allegations made in the complaint. Contrary to his suggestion, this is not a case that raises a question about the quality of the State's proof. Rather, the record leaves no doubt that Vines agreed to admit to these crimes as part of his plea.

Moreover, the statute that governs the sentencing of alleged repeaters makes clear that the defendant's admission to prior crimes is a distinct way of establishing repeater status. *See* ***id.*** ("In the alternative, the trial court may obtain a direct and specific admission from the defendant."). Thus, those decisions, including ***Zimmerman***, which demand scrutiny of the State's proof are simply not applicable when the defendant admits to past crimes. *See* ***id.*** at 557, 518 N.W.2d at 306; *see also* ***Theriault***, 187 Wis.2d at 132, 522 N.W.2d at 257

("[A]t the plea hearing Theriault left no doubt that he was disputing the State's allegation that he was a habitual criminal.").

Accordingly, we only need to gauge whether the record shows that Vines admitted to these crimes. *See* ***State v. Rachwal***, 159 Wis.2d 494, 509, 465 N.W.2d 490, 496 (1991) (concluding that the record showed a "direct and specific admission."). And when we look at the record in this light, at best it shows that the trial court's technical errors required Vines to do some quick arithmetic to verify that his earlier convictions were going to count against him. Nonetheless, we are satisfied with the quality of his admission to these past crimes. We can comfortably conclude that when Vines voiced his agreement with the trial court's recitation, he knew why and how his past convictions were going to negatively impact his sentence.

By the Court.—Judgment and order affirmed.

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