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**DISTRICT II**

February 16, 2022

*To:*

Hon. Brad Schimel  
Circuit Court Judge  
Electronic Notice

Monica Paz  
Clerk of Circuit Court  
Waukesha County  
Electronic Notice

Michael C. Sanders  
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Melissa J. Zilavy  
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Martin Vincent Yanick Jr., #261166  
Kettle Moraine Correctional Inst.  
P.O. Box 282  
Plymouth, WI 53073-0282

You are hereby notified that the Court has entered the following opinion and order:

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2020AP2152-CR

State of Wisconsin v. Martin Vincent Yanick, Jr.  
(L.C. #2018CF1803)

Before Neubauer, Grogan and Kornblum, JJ.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Martin Vincent Yanick, Jr. appeals from a judgment of conviction for operating a motor vehicle while under the influence of an intoxicant (OWI), as a tenth offense, and an order denying his postconviction motion. Yanick contends the circuit court erred in denying his challenge, alleging that evidence of his prior nine OWI convictions was insufficiently established. We disagree. The circuit court properly found that Yanick's admission to the list of prior convictions in the criminal complaint and amended information when he pled no contest to the OWI charge, as a tenth offense, constituted competent proof of the same. Based upon our

review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2019-20).<sup>1</sup> We affirm.

We begin with the complaint and amended information, as the events leading to Yanick's arrest are uncontested. Yanick was charged with five crimes: OWI as a tenth offense, operating a motor vehicle with a prohibited alcohol concentration of more than 0.02 (PAC) as a tenth offense, operating a motor vehicle while revoked, failure to install an ignition interlock device, and obstructing an officer. In the criminal complaint and amended information, the State alleged that Yanick had nine prior alcohol-related convictions that would count for sentence enhancement under WIS. STAT. § 343.307(1). Both the complaint and the amended information listed the violation date and conviction date for each prior alcohol-related offense.<sup>2</sup>

Pursuant to a plea agreement, Yanick pled no contest to OWI as a tenth offense, the PAC charge was dismissed, and the remaining charges were dismissed but read in at sentencing. At the plea hearing, the court asked Yanick if he acknowledged having nine prior offenses as alleged in the criminal complaint and amended information and Yanick said, "Yes." Defense counsel told the court that it could use the criminal complaint, the preliminary hearing, the

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

<sup>2</sup> At the preliminary hearing, the State also submitted Yanick's criminal history report, which detailed Yanick's history of violations, including multiple convictions for refusals under Wisconsin's implied consent law, as well as convictions for operating after revocation, and operating a motor vehicle with a prohibited alcohol concentration (PAC). As relevant here, the report lists nine prior OWI convictions, including the dates of the violations and the county of record, each of which matched the alcohol-related offenses listed in the complaint and amended information. Yanick makes no claim that he was unaware of the specifics of the prior OWI convictions, nor does he develop any argument that they are not countable, other than as discussed herein.

amended information, and the suppression motion as a factual basis for the plea, and the court found a factual basis. The court accepted Yanick's no contest plea to OWI, as a tenth offense.

At sentencing, the State again recounted the nine prior OWI convictions that were listed in Yanick's criminal history report, the complaint, and the amended information, and which Yanick admitted, from 1989, 1993, 1997, 2000, 2000, 2001, 2006, 2009, and 2013. Defense counsel again acknowledged that this was Yanick's tenth OWI.

Yanick moved for postconviction relief, pro se, asserting that he did not admit to having nine prior OWI convictions, and that the State did not prove those convictions. He sought sentencing for OWI as a first offense rather than a tenth offense. The circuit court denied Yanick's motion without a hearing, concluding that "an admission of the prior convictions by the defendant is sufficient proof of the prior convictions[.]" and that Yanick "admitted the prior convictions prior to being found guilty."

Yanick appeals.

Whether the State proved the existence of a prior conviction for sentence enhancement purposes is a question of law that an appellate court reviews de novo. *State v. Braunschweig*, 2018 WI 113, ¶¶9-10, 384 Wis. 2d 742, 921 N.W.2d 199.

Wisconsin has an escalating penalty scheme for successive OWI violations. *See* WIS. STAT. § 346.65(2)(am). Specifically, "[t]he severity of a defendant's penalty for OWI is based on the number of prior convictions under [WIS. STAT.] §§ 940.09(1) and 940.25 'plus the total number of suspensions, revocations, and other convictions counted under [WIS. STAT.]

§ 343.307(1).”” *State v. Carter*, 2010 WI 132, ¶3, 330 Wis. 2d 1, 794 N.W.2d 213 (citation omitted).

Contrary to Yanick’s arguments, prior convictions are not an element of an OWI. Thus, the State bears the burden to establish the same “by a preponderance of the evidence.” *Braunschweig*, 384 Wis. 2d 742, ¶39.<sup>3</sup> Competent proof of prior convictions satisfies that burden, and well-established caselaw makes clear that a defendant’s admission to the prior convictions is sufficient “competent proof.” *State v. Loayza*, 2021 WI 11, ¶38, 395 Wis. 2d 521, 954 N.W.2d 358 (citation omitted); *State v. Wideman*, 206 Wis. 2d 91, 105, 556 N.W.2d 737 (1996) (“If an accused admits to a prior offense that admission is, of course, competent proof of a prior offense and the State is relieved of its burden to further establish the prior conviction.”).

We agree with the circuit court that the record conclusively establishes that Yanick admitted to the nine prior OWI convictions. While the court did not specify nine prior *OWI* convictions, the import was perfectly clear, given the reference to the listed offenses in the complaint and amended information. Clearly, the court asked Yanick to acknowledge the nine prior alcohol-related convictions listed in the complaint and amended information, such that the OWI to which he had just pled would be the tenth. We reject Yanick’s arguments to the contrary.

Because the record conclusively demonstrates that Yanick is not entitled to relief, the circuit court properly rejected his motion for postconviction relief without a hearing. *See State v.*

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<sup>3</sup> The court in *Braunschweig* also rejected the contention, raised by Yanick for the first time on appeal, that a person charged with OWI as a tenth offense under WIS. STAT. § 346.65(2)(am)7. is really charged with OWI as a first offense and with a separate crime under § 346.65(2)(am)7. *See State v. Braunschweig*, 2018 WI 113, ¶¶33-36, 384 Wis. 2d 742, 921 N.W.2d 199.

**Allen**, 2004 WI 106, ¶9, 274 Wis. 2d 568, 682 N.W.2d 433 (“[I]f the motion does not raise facts sufficient to entitle the movant to relief, or presents only conclusory allegations, or if the record conclusively demonstrates that the defendant is not entitled to relief, the circuit court has the discretion to grant or deny a hearing.”).<sup>4</sup>

Therefore,

IT IS ORDERED that the judgment and order of the circuit court are summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Sheila T. Reiff  
Clerk of Court of Appeals*

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<sup>4</sup> Yanick raises multiple arguments for the first time on appeal before us, such as a complaint about his bifurcated sentence, which we decline to review. *See State v. Huebner*, 2000 WI 59, ¶10, 235 Wis. 2d 486, 611 N.W.2d 727. To the extent we have not addressed an argument raised by Yanick on appeal, the argument is deemed rejected. *See State v. Waste Mgmt. of Wis., Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978).