

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

June 13, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-0383-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

LEE E. RHOADS,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Dane County:
STUART A. SCHWARTZ, Judge. *Affirmed.*

VERGERONT, J.¹ Lee E. Rhoads appeals from a judgment of conviction for operating a motor vehicle under the influence of an intoxicant, in violation of § 346.63(1)(a), STATS., and for an occupational license restriction violation, in violation of § 343.10(8)(a)1, STATS. The sole issue on appeal is whether his prosecution was precluded by the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution because he had previously been administratively suspended for the same violation under § 343.305, STATS.

¹ This appeal is decided by one judge pursuant to § 752.31(2), STATS.

Rhoads acknowledges that in *State v. McMaster*, 198 Wis.2d 542, 543 N.W.2d 499 (Ct. App. 1995), *petition for review granted*, ___ Wis.2d ___, 546 N.W.2d 468 (1996), we held that criminal prosecution for operating a motor vehicle with a prohibited blood alcohol concentration after administrative suspension of operating privileges does not violate the Double Jeopardy Clause of the Fifth Amendment. *Id.* at 544, 543 N.W.2d at 499. Rhoads explains that he has raised this issue on appeal solely to preserve it for review.

Following *McMaster*, we conclude that the criminal prosecution did not violate the Double Jeopardy Clause.

By the Court.—Judgment affirmed.

This opinion will not be published.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