

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

July 30, 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. 96-0747**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

**STATE OF WISCONSIN,**

**Plaintiff-Respondent,**

**v.**

**JENNIFER McCLELLAN,**

**Defendant-Appellant.**

APPEAL from a judgment and an order of the circuit court for Milwaukee County: DENNIS P. MORONEY, Judge. *Affirmed.*

WEDEMEYER, P.J.<sup>1</sup> Jennifer McClellan appeals from a judgment entered after she pled guilty to one count of operating a motor vehicle while under the influence of an intoxicant, contrary to §§ 346.63(1)(a) and 346.65(2), STATS. She also appeals from the order affirming the administrative suspension of her license. She claims: (1) the circuit court erred as a matter of law when it revoked her driving privileges for three years; and (2) that imposing a criminal penalty in addition to the administrative suspension of her driver's license

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

violated constitutional double jeopardy principles. Because McClellan waived any objection to the three-year revocation, and any error relating to the revocation was harmless; and because there was no double jeopardy violation, this court affirms.

## I. BACKGROUND

On September 30, 1995, while driving in the Village of Shorewood, McClellan was pulled over by a Shorewood police officer. The officer smelled the odor of alcohol on McClellan's breath, administered field sobriety tests, arrested McClellan, and took her to the police station. At the station, McClellan willingly submitted to an intoxilyzer test. The test indicated that McClellan's blood alcohol count was .13. This was McClellan's third offense for operating a motor vehicle while intoxicated. Her license was administratively suspended for six months.

McClellan requested judicial review from the circuit court. On December 11, 1995, the circuit court conducted judicial review of the administrative suspension. After the hearing, the circuit court affirmed the six-month administrative suspension of her driver's license. It also ordered that McClellan's driving privileges be revoked for three years.

In February 1996, McClellan entered a guilty plea, and was convicted. She was sentenced to 135 days in the House of Correction. She now appeals.

## II. DISCUSSION

This court rejects both arguments that McClellan asserts. She first asserts that the circuit court erred when it revoked her driving privileges for three years. She argues that the circuit court did not have the authority to do so. This court rejects her claim for two reasons: (1) she raises this issue for the first time on appeal; and (2) the circuit court's ruling was never entered in the written order affirming the administrative suspension. Because McClellan did not object to the revocation prior to appeal, she waived review of the issue. *See*

*State v. Treffert*, 90 Wis.2d 528, 536, 280 N.W.2d 316, 320 (Ct. App. 1979). Further, even if the issue was not waived, and it was erroneous, the error was harmless because the revocation was never actually entered, and therefore has no practical effect.<sup>2</sup> *State v. Dyess*, 124 Wis.2d 525, 543, 370 N.W.2d 222, 231 (1985).

McClellan also claims that the six-month administrative suspension of her driver's license and the imposition of the 135 day sentence for the same offense was a violation of double jeopardy. This court does not agree. This exact argument was recently rejected by this court in *State v. McMaster*, 198 Wis.2d 542, 553, 543 N.W.2d 499, 503 (Ct. App. 1995) (holding that criminal prosecution for drunk driving offense subsequent to administrative suspension of drivers license does not violate double jeopardy clause), *review granted*, 546 N.W.2d 468 (1996). Accordingly, this court rejects McClellan's double jeopardy claim.

*By the Court.* — Judgment and order affirmed.

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

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<sup>2</sup> Because the revocation order was never entered, the Department of Transportation did not take any action to revoke McClellan's driving privileges. The order entered by the trial court merely affirmed the six-month administrative suspension of McClellan's driver's license. This court's review of McClellan's traffic record confirms the foregoing.