

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

August 22, 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. 96-1029-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

WILLIAM G. CAMPBELL,

Defendant-Appellant.

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

ROGGENSACK, J. The defendant, William G. Campbell (Campbell), appeals the denial of his motion to dismiss one count of operating a motor vehicle while under the influence of an intoxicant (OMVWI) and his conviction. On appeal¹, Campbell contends that the initiation of a criminal OMVWI prosecution subsequent to the imposition of an administrative suspension of his driving privileges violates the Double Jeopardy Clause of the Fifth Amendment of the United States Constitution. Campbell's argument is

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

contrary to controlling precedent. Accordingly, the decision of the trial court is affirmed.

On April 15, 1995, Campbell was stopped and arrested for operating a motor vehicle while intoxicated and operating with a prohibited alcohol concentration in violation of § 346.63(1)(a) and (b), STATS. After failing a chemical test for intoxication, Campbell was served with a Notice of Intent to Suspend Operating Privilege, and his driver's license was administratively suspended pursuant to § 346.305, STATS. Subsequently, Campbell was charged in a criminal complaint with violations of § 346.63(1)(a) and (b). Campbell filed a Motion to Dismiss on double jeopardy grounds, which the trial court denied. Campbell then pled no contest to the OMVWI count, and the court adjudged him guilty, imposed a fine of \$1,796.00, revoked his operating privileges for a period of thirty-six (36) months, sentenced him to four (4) months in jail to be stayed for sixty (60) days, and ordered an alcohol assessment.

Campbell argues that the administrative suspension of his operating privileges constituted a "punishment" to which double jeopardy attached, precluding any criminal action for OMVWI. His contention requires analysis of both the Fifth Amendment of the United States Constitution² and Wisconsin's Implied Consent Law, § 343.305, STATS. Because the question involves the application of constitutional principles to settled facts, we will review the issue *de novo*. *State v. Pheil*, 152 Wis.2d 523, 529, 449 N.W.2d 858, 861 (Ct. App. 1989).

The Fifth Amendment provides that no person shall "be subject for the same offense to be twice put in jeopardy of life or limb." U.S. CONST. This Double Jeopardy Clause includes three distinct constitutional guarantees: (1) protection against a second prosecution for the same offense after an acquittal; (2) protection against a second prosecution for the same offense after a conviction; and (3) protection against multiple punishments for the same

² Article I, sec. 8 of the Wisconsin Constitution also provides that "no person for the same offense may be put twice in jeopardy of punishment." However, Wisconsin interprets its double jeopardy clause in accordance with the rulings of the United States Supreme Court, *State v. Kurzawa*, 180 Wis.2d 502, 522, 509 N.W.2d, 712, 721, ___ U.S. ___, 114 S.Ct. 2712, 129 L.Ed.2d 839 (1984), and because the defendant does not raise the Wisconsin constitutional issue, this analysis is limited to the federal clause.

offense. *State v. Kurzawa*, 180 Wis.2d 502, 515, 509 N.W.2d 712, 717, *cert. denied*, ___ U.S. ___, 114 S.Ct. 2712, 129 L.Ed.2d 839 (1994). Campbell argues that he was subjected to multiple punishments for the same offense, contrary to the third prong of double jeopardy analysis.

A civil penalty may constitute "punishment" when the penalty serves the goals of punishment, such as retribution or deterrence. *United States v. Halper*, 490 U.S. 435, 448, 109 S.Ct. 1892, 1901-02, 104 L.Ed.2d 487 (1989). However, the Wisconsin Court of Appeals has already determined that § 343.305, STATS. is remedial in nature because it was enacted to keep drunken drivers off the road. *State v. McMaster*, 198 Wis.2d 542, 548, 543 N.W.2d 499, 501, *petition for review granted*, 546 N.W.2d 468 (1996). In other words, the primary purpose of the implied consent law is to protect innocent drivers and pedestrians, rather than to punish drunken drivers. *Id. McMaster* represents the current state of Wisconsin law, and is binding on this court. Therefore, Campbell's criminal prosecution for operating a motor vehicle while intoxicated, after the administrative suspension of his operating privileges, did not constitute multiple punishments, and did not violate the Double Jeopardy Clause.

By the Court.--Judgment affirmed.

Not recommended for publication in the official reports. See RULE 809.23(1)(b)4., STATS.