

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

September 12, 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. 96-1243-CR**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

**STATE OF WISCONSIN,**

**Plaintiff-Respondent,**

**v.**

**JOHN T. MILLER,**

**Defendant-Appellant.**

APPEAL from a judgment of the circuit court for Dane County:  
DANIEL R. MOESER, Judge. *Affirmed.*

EICH, C.J.<sup>1</sup> John T. Miller appeals his conviction of driving while intoxicated (second offense). He moved to dismiss the charge on double-jeopardy grounds, claiming that the administrative suspension of his license<sup>2</sup>

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

<sup>2</sup> We note the assertion in the State's brief – which Miller does not dispute in his reply brief – that, at a hearing on his petition for administrative review of the notice of license suspension, the examiner rescinded the suspension imposed by the arresting officer. As a result of that decision and the thirty-day "hiatus" between the officer's notice of

under the implied-consent law, § 343.305, STATS., bars his subsequent prosecution for driving while intoxicated (or with a prohibited alcohol concentration). The trial court denied the motion, citing our decision 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), in which we held that no such bar exists.

Miller's appeal, apparently filed for the purpose of "preserving the issue for further review," acknowledges the controlling effect of *McMaster*, and we agree.

*By the Court.*—Judgment affirmed.

This opinion will not be published.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

(..continued)

suspension and actual suspension, the State says that Miller's license never was suspended: the suspension "was rescinded before it went into effect."