

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

NOTICE

August 21, 1997

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.

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

No. 97-0730-CR-NM

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

DENNIS E. JONES,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dodge County:
JOHN R. STORCK, Judge. *Affirmed.*

EICH, C.J.¹ Counsel for Dennis Jones has filed a no merit report pursuant to RULE 809.32, STATS. Jones has responded to the report. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S.

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

738 (1967), we conclude that there is no arguable merit to any issue that could be raised on appeal. We therefore summarily affirm the trial court's judgment.

Officers at the Waupun Correctional Institution, where Jones is an inmate, received an anonymous tip that he would soon be receiving illegal drugs from a visitor. A few days later, just after Jones had a visitor, an officer searched him and discovered marijuana and cocaine. As a result, the State charged him with two counts of possessing drugs, as a repeater.

Jones moved to suppress the seized evidence as the product of an illegal arrest and search. He also moved for production of a videotape of his visit that was referred to in a police report. The trial court found that Jones was lawfully detained and searched under the applicable administrative rules on prison searches. The court also found, after hearing testimony from prison officers, that the visit had not been videotaped.

Jones ultimately agreed to plead no contest in exchange for dismissal of the repeater allegations. The court accepted the plea and sentenced Jones to a jointly recommended sentence of two consecutive terms totaling one year, consecutive to his present sentence.

Counsel's no merit report addresses whether Jones received effective assistance of trial counsel, whether he knowingly, voluntarily and intelligently pled no contest, and whether the prosecution placed him in double jeopardy, given the fact that the prison imposed administrative sanctions on him for possessing the drugs. We conclude that counsel's analysis of these issues is correct in all respects, as is his conclusion that none has merit.

In his response, Jones concedes that Wisconsin law resolves the double jeopardy question against him, but argues that cases from other jurisdictions support his contention that institutional punishment and criminal punishment for the same offense constitute double jeopardy. However, for purposes of this appeal, the issue has been resolved by our holding in *State v. Killebrew*, 109 Wis.2d 611, 612, 327 N.W.2d 155, 156 (Ct. App. 1982). We are bound by prior decisions of this court. *Cook v. Cook*, 208 Wis.2d 166, 190, 560 N.W.2d 246, 256 (1997).

Jones next contends that under § 946.73, STATS., the charges against him should have been Class C misdemeanors, with maximum penalties of twenty days in jail each. That section provides that whoever violates any law or rule “made pursuant to state law governing ... [a] penal institution while within the same ... is guilty of a Class C misdemeanor.” Jones did not violate a rule governing a penal institution. He violated the state’s drug laws, which provide for their own set of penalties. Section 946.73 is not applicable.

Finally, Jones contends that the State unlawfully withheld exculpatory evidence in the form of the videotape, certain photographs, and statements from other inmates. Jones waived that issue when he entered his no contest plea. *County of Racine v. Smith*, 122 Wis.2d 431, 434, 362 N.W.2d 439, 441 (Ct. App. 1984). In any event, the trial court found that prison officers were telling the truth when they testified that no videotape ever existed. The trial court’s credibility determinations are not subject to review. *Turner v. State*, 76 Wis.2d 1, 18, 250 N.W.2d 706, 715 (1977).

Our independent review of the record discloses no other potential issues for appeal. As the trial court ruled, prison officials lawfully searched Jones

under the applicable administrative rules. *See* WIS. ADM. CODE § DOC 306.16(2). We therefore affirm the judgment of conviction and relieve Jones' counsel of any further representation of him in this matter.

By the Court.—Judgment affirmed.

