COURT OF APPEALS
DECISION
DATED AND FILED

June 8, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 99-3142-CR

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

JEREMY J. HANSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Waupaca County: JOHN P. HOFFMANN, Judge. *Affirmed*.

¶1 DEININGER, J.[1] Jeremy Hanson appeals a judgment convicting him of operating a motor vehicle after his operating privilege was revoked (OAR), as a habitual traffic offender (HTO). He also appeals an order denying

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (1997-98). All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

postconviction relief. Hanson contends that the circuit court erred in imposing criminal penalties after convicting him as a habitual offender because his HTO status had been rescinded prior to the date of his conviction. We conclude, however, that Hanson waived the right to appeal his conviction when he pled no contest to the criminal OAR charge. Accordingly, we affirm the judgment and order of the circuit court.

BACKGROUND

¶2 Between July and October of 1996, Hanson was convicted four times of operating a motor vehicle after his license had been revoked or suspended. In December 1996, Hanson was determined to be a habitual traffic offender and his license was revoked for five additional years. In December 1998, the State charged Hanson with operating after revocation as an HTO. Hanson subsequently requested the Department of Transportation to recalculate his status as a habitual offender, and in February 1999, the Department rescinded the HTO order.

¶3 In May 1999, Hanson informed the court that he intended to plead no contest to the charge of operating after revocation as a habitual traffic offender. The court engaged in a plea colloquy with Hanson and reminded him that he was charged with his "fifth offense" and that under WIS. STAT. § 343.44(2)(e)1, the court could "impose the maximum sentence, which is a fine of $2,500 and a sentence of one year in the county jail…." The court also informed Hanson that, as a habitual offender, he could be subject to an additional $5,000 fine and could be imprisoned for an additional one hundred and eighty days. Finally, the court asked Hanson's attorney if she was "satisfied that this would be [Hanson's] fifth offense" and if she was satisfied that the charge should be a "criminal charge."

The attorney answered "yes" to both questions. The court then accepted Hanson's plea, found him guilty of operating a motor vehicle after revocation as a habitual offender, imposed a fine of $300 and sentenced him to twenty days in jail.

¶4 Hanson moved for postconviction relief on the grounds that his HTO status had been rescinded prior to his conviction and sentencing, and that the court therefore erred in imposing a criminal penalty. The court denied the motion, and Hanson appeals both the judgment of conviction and the order denying postconviction relief.

ANALYSIS

¶5 On appeal, Hanson contends that the circuit court erred in sentencing him to twenty days in jail. Specifically, Hanson contends that he should not have been sentenced as a habitual traffic offender because his HTO status had been rescinded prior to the date of his conviction. Hanson notes that, under WIS. STAT. § 351.08, any person who is convicted as a habitual traffic offender is subject to additional penalties, including jail time. Hanson apparently believes that the court's criminal sentence was based entirely on its understanding that Hanson was a habitual offender, and that the court could not have imposed a criminal penalty if it had considered the fact that his HTO status had been rescinded. Hanson therefore contends that the rescission of his HTO status removed any grounds for

imposing a criminal sentence, and that the circuit court thus erred in sentencing him to jail.[2]

¶6 This court will not consider whether the circuit court erred in imposing criminal penalties, however, because we conclude that Hanson waived the right to challenge his conviction and sentence when he pled no contest to the criminal OAR charge. It is well established that a plea of no contest, when knowingly and voluntarily made, waives all alleged nonjurisdictional defects and defenses. *See* ***State v. Bangert***, 131 Wis. 2d 246, 293, 389 N.W.2d 12 (1986). Wisconsin generally recognizes only three exceptions to the waiver rule: jurisdictional challenges, double jeopardy claims, and challenges to denials of motions to suppress. *See* ***id.***; ***State v. Morris***, 108 Wis. 2d 282, 284 n.2, 322 N.W.2d 264 (1982); WIS. STAT. § 971.31(10). Hanson's contention that the circuit court erred in imposing a criminal sentence does not involve a double jeopardy or suppression challenge, and we conclude that the circuit court had jurisdiction over him and over the crime for which he was ultimately convicted.[3] Our review on appeal is therefore limited to ensuring that Hanson's no contest

[2] We note that Hanson was charged with his fifth violation of WIS. STAT. § 343.44(1) and that even without the HTO penalty enhancer Hanson may have been subject to criminal penalties. Section 343.44, as effective at the time of this offense, distinguishes between OAR convictions that arise solely out of suspensions for failure to pay a fine or forfeiture (FPF), and those that do not. Convictions that arise out of suspensions for FPF are subject only to civil penalties, whereas other convictions for fifth offense OAR are subject to criminal penalties. *See* § 343.44(2)(e). If the circuit court had concluded that Hanson's conviction had not arisen solely from suspensions for FPF, the court could have sentenced Hanson to up to one year in jail, even if he was not an HTO. *See* § 343.44(2)(e)1. The parties do not discuss in this appeal whether, absent HTO status, Hanson's driving record would support a criminal conviction under § 343.44(1), and we therefore do not address the issue.

[3] During postconviction proceedings, Hanson argued that the circuit court lacked jurisdiction over the OAR charge. Under article VII, section 8 of the Wisconsin Constitution, however, the circuit court has "original jurisdiction in all matters civil and criminal within this state…."

plea was knowingly and voluntarily made, and that the circuit court complied with the requirements set forth in WIS. STAT. § 971.08 and ***State v. Bangert***, 131 Wis. 2d 246, 389 N.W.2d 12 (1986).[4] After reviewing the record, we are convinced that these requirements were followed and that Hanson knowingly and voluntarily entered a plea of no contest to the criminal charge of operating after revocation, fifth offense.[5]

¶7 We recognize that the circuit court had the opportunity to address Hanson's present argument by way of its postconviction hearing and order. This fact, however, does not alter our conclusion that Hanson waived the right to raise the issue on appeal. If Hanson wished to object to the fact that he was charged with a criminal violation, he should have moved to dismiss the criminal complaint instead of pleading no contest to the criminal charge. Nonjurisdictional challenges to a criminal charge may only be preserved by pleading not guilty, and Hanson failed to do so. *See* ***Bangert***, 131 Wis. 2d at 293.

CONCLUSION

¶8 For the reasons discussed above, we affirm the judgment and order of the circuit court.

By the Court.—Judgment and order affirmed.

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[4] WISCONSIN STAT. § 971.08(1) states that at a plea hearing the court is required to "[a]ddress the defendant personally" and determine that the plea "is made voluntarily with understanding of the nature of the charge and the potential punishment if convicted." Under ***State v. Bangert***, 131 Wis. 2d 246, 269, 389 N.W.2d 12 (1986), the court is also required to "inform the defendant of the charge's nature or, instead, to ascertain that the defendant in fact possesses such information."

[5] Hanson does not claim on appeal that his plea was not knowing and voluntary, or that his counsel rendered ineffective assistance with regard to his decision to plead no contest.

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