

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 2, 2002

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

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

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 02-0485
STATE OF WISCONSIN**

Cir. Ct. No. 01-TR-10706

**IN COURT OF APPEALS
DISTRICT II**

COUNTY OF SHEBOYGAN,

PLAINTIFF-RESPONDENT,

v.

MICHAEL L. JACOBSEN,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Sheboygan County:
TIMOTHY M. VAN AKKEREN, Judge. *Dismissed.*

¶1 ANDERSON, J.¹ Michael L. Jacobsen waived his right to appeal when he entered a “no contest” plea to the civil forfeiture charge of operating a

¹ This is a one-judge appeal pursuant to WIS. STAT. § 752.31(2)(c) (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

motor vehicle while intoxicated in violation of WIS. STAT. § 346.63(1)(a). Therefore, we dismiss his appeal.

¶2 Jacobsen was charged with operating a motor vehicle while intoxicated (OWI) contrary to WIS. STAT. § 346.63(1)(a), as a first offense, and operating a motor vehicle with a prohibited alcohol concentration (PAC) contrary to § 346.63(1)(b), first offense. Jacobsen filed pretrial motions seeking to suppress the results of the blood analysis on several different theories. The circuit court denied all of the motions and Jacobsen entered, by stipulation, a no contest plea to the OWI charge. Jacobsen appeals from the denial of his suppression motions.

¶3 After Jacobsen filed his notice of appeal, this court entered an order requesting the parties to address the issue of whether his no contest plea to a civil forfeiture constituted a waiver of his right to appeal. The order stated:

A no contest plea is the equivalent of a guilty plea, and waives the right to raise nonjurisdictional defects and defenses, including claimed violations of constitutional rights. *See County of Racine v. Smith*, 122 Wis. 2d 431, 434, 362 N.W.2d [439] (Ct. App. 1984). In criminal cases, an exception exists for orders denying motions to suppress evidence or motions challenging the admissibility of a statement of a defendant. WIS. STAT. § 971.31(10) (1999-2001). That exception, however, does not apply to civil forfeiture matters. *County of Racine*, 122 Wis. 2d at 436.

Waiver, however, is not a jurisdictional bar to an appeal, but rather a principle of judicial administration. In first offense OWI matters, this court may consider: (1) the administrative efficiencies resulting from the plea; (2) whether an adequate record has been developed; (3) whether the appeal appears motivated by the severity of the sentence; and (4) the nature of the potential issue. *See County of Ozaukee v. Quelle*, 198 Wis. 2d 269, 275-76, 542 N.W.2d 196 (Ct. App. 1995).

¶4 Jacobsen’s argument in response to our request is unpersuasive. We acknowledge that the first three reasons might apply as well in the present case as they did in *Quelle*. The fourth reason, however, is simply not present here. There are numerous published cases disposing of the various theories Jacobsen gives for suppressing the results of the blood analysis. We can think of no reason why we should yet again address those theories.² This is especially true because we are bound to apply those precedents and would affirm the denial of the motions to suppress. *Cook v. Cook*, 208 Wis. 2d 166, 189-90, 560 N.W.2d 246 (1997).

By the Court.—Appeal dismissed.

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

² “An appellate court is not a performing bear, required to dance to each and every tune played on an appeal.” *State v. Waste Mgmt. of Wis., Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978).

