

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

December 5, 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. 95-2050-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

RAPHAEL R. MONTELLO,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Dane County:
RICHARD J. CALLAWAY, Judge. *Affirmed.*

Before Eich, C.J., Dykman, P.J., and Vergeront, J.

PER CURIAM. Raphael Montello appeals from a judgment convicting him of possessing marijuana with intent to deliver it. Montello pleaded no contest to the charge. The State's principal evidence in the case came from an apartment search conducted pursuant to a search warrant. The issue Montello raises on appeal is whether the court had probable cause to issue

the warrant. Because that issue was never decided by the trial court, the issue is waived. We therefore affirm.

The record shows that Montello filed a motion to suppress evidence seized under the warrant, for the reason he now argues on appeal. However, the record also indicates that the trial court never ruled on the motion, having considered it withdrawn when Montello pleaded no contest. Although Montello made several efforts to obtain a ruling on the issue, all came after the entry of his judgment of conviction. By then it was too late. With only one exception, a no contest plea waives all nonjurisdictional issues in postconviction proceedings. *County of Racine v. Smith*, 122 Wis.2d 431, 434, 362 N.W.2d 439, 441 (Ct. App. 1984). That exception is where, unlike here, the trial court has already denied a suppression motion. Section 971.31(10), STATS.

By the Court. – Judgment affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.