



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT IV

February 20, 2013

To:

Hon. Michael R. Fitzpatrick
Circuit Court Judge
51 S. Main Street
Janesville, WI 53545

Richard J. Sullivan
Asst. District Attorney
51 S. Main Street
Janesville, WI 53545

Eldred Mielke
Clerk of Circuit Court
Rock Co. Courthouse
51 S. Main Street
Janesville, WI 53545

Brian J. Conaway 175906
Oshkosh Corr. Inst.
P.O. Box 3310
Oshkosh, WI 54903-3310

Marguerite M. Moeller
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

You are hereby notified that the Court has entered the following opinion and order:

2010AP3051

State of Wisconsin v. Brian J. Conaway (L.C. # 2007CF3115)

Before Lundsten, P.J., Higginbotham and Sherman, JJ.

Brian Conaway appeals an order that denied his motion for postconviction relief from a judgment convicting him of being party to the crime of burglary of a building or dwelling. After reviewing the briefs and record at conference, we conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2011-12).¹

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

The sole issue Conaway raises on appeal is whether law enforcement officers violated his constitutional rights by seizing his vehicle, moving it to a private lot, and installing a GPS tracking device on it. See *United States v. Jones*, — U.S. —, 132 S. Ct. 945 (2012). However, Conaway waived any right to judicial review of such a claim by entering a guilty plea without first preserving the issue in a suppression motion. *Tollett v. Henderson*, 411 U.S. 258, 267 (1973) (“When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea”); cf. WIS. STAT. § 971.31(1) (allowing defendant who has entered plea to appeal an order denying a motion to suppress).

Because we conclude that the issue presented on appeal is procedurally barred, we need not address the State’s additional request that we strike materials in the appellant’s appendix as being outside of the record.

IT IS ORDERED that the order denying Conaway’s postconviction motion is summarily affirmed under WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals