

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**March 22, 2005**

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. 04-2980-CR**

**Cir. Ct. No. 04CT75**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**ANTHONY M. PRINTUP,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for St. Croix County:  
SCOTT R. NEEDHAM, Judge. *Dismissed.*

¶1 HOOVER, P.J.<sup>1</sup> Anthony Printup appeals a judgment of conviction for operating a motor vehicle while under the influence of an intoxicant (OWI), third offense. Printup argues the two predicate offenses, which both occurred in Minnesota, are invalid because, under Wisconsin law, he did not properly waive

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

his right to counsel in those cases. He therefore argues his Wisconsin conviction should be treated as a first offense and he can be convicted only of a forfeiture. We conclude that the issue cannot be raised in this court because Printup pled guilty, thereby waiving his right to appeal the court's ruling that he adequately waived his right to counsel in the Minnesota cases. Accordingly, we dismiss the appeal.

### BACKGROUND

¶2 Printup was arrested for OWI on February 16, 2004. He had prior OWI convictions resulting from occurrences in Washington County, Minnesota, on October 16, 1995, and Dakota County, Minnesota, on February 11, 1999. Printup appeared pro se in both Minnesota cases. At his trial in the Wisconsin case, he moved to collaterally attack the Minnesota convictions, arguing he did not knowingly, intelligently or voluntarily waive his right to counsel in those cases. The court was not persuaded and denied the motion. Printup then pled guilty, reserving his right to appeal the court's decision regarding his collateral attack of the Minnesota convictions.

### DISCUSSION

¶3 Printup argues the trial court erred when it ruled that he adequately waived his right to counsel in the Minnesota cases. However, this court concludes that the issue Printup raises is not appealable because he entered a guilty plea. We therefore do not render a decision on the merits of the issue.

¶4 In *Mack v. State*, 93 Wis. 2d 287, 293, 286 N.W.2d 563 (1980), our supreme court stated as a general rule, "a guilty plea, voluntarily and understandingly made constitutes a waiver of nonjurisdictional defects and

defenses ....” The one exception to this rule is found in WIS. STAT. § 971.31(10) which states, “An order denying a motion to suppress evidence or a motion challenging the admissibility of a statement of a defendant may be reviewed upon appeal from a judgment of conviction notwithstanding the fact that such judgment was entered upon a plea of guilty.” Printup’s issue does not fall into either one of these categories, and thus the exception does not apply. When no exception applies, the guilty-plea-waiver rule “is to be applied even though a defendant expressly states his intent not to waive certain issues on appeal and makes that intention a condition of his plea and even though the prosecutor and judge acquiesce in that intention.” *State v. Riekkoff*, 112 Wis. 2d 119, 127-28, 332 N.W.2d 744 (1983).

¶5 We note that Printup pled guilty believing he was entitled to appellate review of the collateral attack issue. He thought he had preserved his right of review when as a matter of law he had not. Therefore, under these circumstances, his plea may not have been knowing nor voluntary. *See id.* at 128. However, that will be for the trial court to determine if Printup moves to withdraw his guilty plea. *See id.*

*By the Court.*—Dismissed.

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