

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 5, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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 § 808.10 and RULE 809.62, STATS.

No. 96-3615-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DARRIN D. BURNS,

DEFENDANT-APPELLANT.

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

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

PER CURIAM. Darrin Burns appeals from a judgment convicting him of homicide by use of a vehicle while intoxicated, contrary to § 940.09(1)(b), STATS. He also appeals from an order denying his postconviction motion, after judgment was entered on his no contest plea. The sole issue on appeal is whether the judgment is invalid because Burns never actually articulated his plea at the

plea hearing. We conclude that the trial court properly entered judgment notwithstanding Burns's failure to formally plead, and therefore affirm.

Section 972.13(1), STATS., provides that a judgment of conviction can only be entered upon a fact finder's finding of guilt or the defendant's plea of guilty or no contest. Burns contends that because the trial court never asked for his plea, and he never stated it on the record, "there exists no statutory authority to enter a judgment of conviction, or to sentence" Burns. However, in *State v. Salentine*, 206 Wis.2d 418, 426-27, 557 N.W.2d 439, 441-42 (Ct. App. 1996), this court held that requiring a specific utterance such as "I plead no contest" rewards form over substance, and we therefore declined to construe § 972.13 as requiring a formal, articulated plea in order to validate the judgment. Instead, the proper inquiry is into the defendant's intent and his or her understanding of the proceedings. *Id.* Burns, in this case, concedes he intended to plead no contest, and does not contest his understanding of the proceedings, which the record conclusively establishes in any event.

By the Court.—Judgment and order affirmed.

This opinion will not be published.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

