COURT OF APPEALS
DECISION
DATED AND FILED

February 10, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 97-2154-CR

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RAY L. WHITE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: RUSSELL W. STAMPER,[1] Reserve Judge. *Reversed and cause remanded.*

CURLEY, J.[2] Ray L. White appeals from a judgment of conviction entered after he pleaded no contest to one count of operating a motor vehicle while

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[1] The judgment of conviction was entered by Reserve Judge Russell W. Stamper, acting for Judge Bonnie L. Gordon.

[2] This appeal is decided by one judge pursuant to § 752.31(2), STATS.

under the influence of an intoxicant, contrary to §§ 346.63(1)a and 346.65(2), STATS. White claims that the trial court erred by accepting his no contest plea. White also claims that the OWI statute does not apply because, at the time he was arrested, his car was disabled due to a flat tire. The State concedes that the trial court erred by accepting White's no contest plea, but argues that the OWI statute applies. As a result of the State's concession of trial court error, this court reverses the judgment of conviction and remands to the trial court in order to allow White to withdraw his no contest plea. This court declines to address White's second claim because our holding with respect to his plea is dispositive.

I. BACKGROUND.

On December 15, 1996, White was found by the police asleep behind the wheel of a running vehicle. After White was arrested, a blood alcohol test revealed his blood alcohol concentration to be .22. Although White was charged with operating under the influence, he claimed he was innocent. White claimed that he and a friend, Mr. Thickland, went out that evening, and that Thickland had driven the car the entire night. During the evening, White claimed that the car they were riding in got a flat tire. Both men got out of the car to inspect the flat, and when Thickland left to get assistance, White got back into the car, this time on the driver's side. It was the middle of December and, according to White, Thickland left the car running in order to allow White to keep the heat on. Thus, White claimed that when the police found him, he had not actually driven the car or even operated the heating controls.

The trial court did not allow White to enter a guilty plea, apparently because White would not actually admit that he "operated" the motor vehicle. The

trial court did, however, allow White to enter a no contest plea. White now appeals.

II. ANALYSIS.

White claims that the trial court erred by allowing him to enter a no contest plea, in light of the fact that he was not allowed to enter a guilty plea. The State concedes that the trial court erred in allowing White to plead no contest, and does not oppose White's request for reversal. Therefore, we reverse the judgment of conviction and remand to the trial court in order to allow White to withdraw his no contest plea.

This holding is dispositive of White's case, and therefore, we decline to address White's second claim. *See* ***Gross v. Hoffman***, 227 Wis. 296, 300, 277 N.W. 663, 665 (1938) (if decision on one point disposes of appeal, appellate court need not decide other issues).

By the Court.—Judgment reversed and cause remanded.

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