

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 7, 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. 98-1145-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

SCOTT L. HANSEN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Kenosha County:
MARY KAY WAGNER-MALLOY, Judge. *Affirmed.*

SNYDER, P.J. Scott L. Hansen appeals a judgment of operating a motor vehicle while under the influence of an intoxicant (OWI), second offense, in violation of § 346.63(1)(a), STATS. Hansen entered a no contest plea following the trial court's denial of his motion to dismiss. The court ruled that § 346.63(1)(a) applied to Hansen because the parking lot where he was found intoxicated was a "premises held out to the public for use of their motor vehicles" pursuant to § 346.61, STATS. On appeal, Hansen challenges the court's ruling.

The State, however, argues that the merits of Hansen's argument need not be reached because he waived his right to appeal all nonjurisdictional issues by pleading no contest. We agree with the State and affirm the judgment of the trial court.

As a general rule, a guilty plea constitutes a waiver of nonjurisdictional defects and defenses, including constitutional violations prior to the plea. *See State v. Riekkoff*, 112 Wis.2d 119, 122-23, 332 N.W.2d 744, 746 (1983); *State v. Princess Cinema, Inc.*, 96 Wis.2d 646, 651, 292 N.W.2d 807, 810 (1980). Waiver also applies to no contest pleas. *See Princess Cinema*, 96 Wis.2d at 651, 292 N.W.2d at 810. The guilty plea waiver rule does not deprive an appellate court of its subject matter jurisdiction; rather, it is "a rule of administration and not of power." *State v. Grayson*, 165 Wis.2d 557, 561, 478 N.W.2d 390, 392 (Ct. App. 1991). As such, we are more likely to review a claimed error if the issues are of statewide importance or resolution will serve the interests of justice. *See id.*; *see also Mack v. State*, 93 Wis.2d 287, 296, 286 N.W.2d 563, 567 (1980).

Although there is an exception to the general waiver rule under § 971.31(10), STATS., we hold that it is inapplicable in this case. Section 971.31(10) applies to "a motion to suppress evidence or a motion challenging the admissibility of a statement of a defendant." In Hansen's case, he filed a motion in limine moving the court "for an order dismissing the instant action against [Hansen] for the reason that [the] arrest occurred without probable cause to believe that [Hansen] had violated the law." However, at Hansen's motion hearing, there was no discussion of probable cause or suppression of evidence. Instead, Hansen sought the dismissal of the OWI charges based on his interpretation of § 346.61, STATS., which provides that the reckless and drunken driving statutes apply to "all

premises held out to the public for use of their motor vehicles.” Because Hansen’s motion to dismiss did not involve the suppression of evidence, we are convinced that § 971.31(10) is inapplicable.

Additionally, we find that Hansen’s claimed error, addressing the applicability of § 346.61, STATS., to parking lots of establishments not presently open to business, is not of particular statewide importance. Moreover, the interests of justice do not require the resolution of this matter. Thus, we deem Hansen’s challenge to the trial court’s interpretation of § 346.61 waived and affirm the trial court’s judgment of conviction.

By the Court.—Judgment affirmed.

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

