COURT OF APPEALS
DECISION
DATED AND FILED

January 31, 2002

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 01-2192-FT

Cir. Ct. No. 01-TR-18678
01-TR-18679

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

VILLAGE OF OREGON,

PLAINTIFF-RESPONDENT,

V.

ROBYN R. SUNDAY,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County: ROBERT A. DeCHAMBEAU, Judge. *Affirmed.*

¶1 DEININGER, J.[1] Robyn Sunday appeals a judgment convicting her of first-offense operating a motor vehicle with a prohibited alcohol concentration

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (1999-2000), and is an expedited appeal under WIS. STAT. RULE 809.17. All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

(PAC). She claims that the trial court erred in denying her motion to suppress evidence on the grounds that the arresting officer lacked reasonable suspicion to stop her vehicle. We conclude, however, that Sunday forfeited her opportunity to appeal the denial of her suppression motion when she entered a plea of no contest to the charge of violating the Village of Oregon's traffic ordinance. Accordingly, we affirm the judgment.

BACKGROUND

¶2 A Village of Oregon police officer stopped Sunday's vehicle after he observed it cross over the highway's white fog line several times. The officer subsequently arrested Sunday for operating a motor vehicle while under the influence of an intoxicant (OMVWI), and he later also charged her with the PAC offense. Sunday moved to suppress the evidence obtained following the traffic stop, claiming that the officer lacked reasonable suspicion to stop her vehicle. The trial court denied the motion and Sunday entered a plea of no contest. She appeals the judgment convicting her of the PAC violation.

ANALYSIS

¶3 Sunday concedes, and it is well established, that a plea of guilty or no contest, knowingly and understandingly made, constitutes a waiver of nonjurisdictional defects and defenses, including claimed violations of constitutional rights. ***County of Racine v. Smith***, 122 Wis. 2d 431, 434, 362 N.W.2d 439 (Ct. App. 1984). The statutory exception to the "guilty-plea-waiver" rule set forth in WIS. STAT. § 971.31(10) for criminal cases does not apply in civil forfeiture actions, such as the one before us. ***Id***. at 435-36. Because the rule is not one of appellate jurisdiction, however, we may exercise our discretion and decline to apply it, thereby reaching the merits of an otherwise waived error. ***Id***. at 434.

¶4 Sunday contends that we should decline to apply the guilty-plea-waiver rule and address the merits of her appeal as we did in ***County of Ozaukee v. Quelle***, 198 Wis. 2d 269, 542 N.W.2d 196 (Ct. App. 1995). We cited four reasons in ***Quelle*** for declining to apply the waiver rule: (1) the no contest plea spared an unnecessary trial; (2) the appealed issue was squarely before the trial court and we thus had an adequate record on which to address it; (3) there was no indication that the defendant appealed only to avoid a sentence that was harsher than anticipated; and (4) there were no published cases addressing the legal question at issue. ***Id***. at 275-76.

¶5 We acknowledge that the first three reasons might apply as well in the present case as they did in ***Quelle***. The fourth reason, however, is simply not present here. There are numerous published cases discussing the reasonable suspicion standard for justifying investigative stops. Moreover, the present facts are far from unique. This court receives many appeals of OMVWI/PAC convictions raising the issue of whether reasonable suspicion existed when an officer observed only some form of erratic driving but no clear traffic violation prior to effecting a stop. Each of these cases turn on the totality of the observations made and information available to the arresting officer, as would the present one were we to reach the merits. In other words, a decision on the merits here would not develop the law, but only apply well-settled law to rather mundane facts. Moreover, our decision in this appeal could not be published in any event. *See* WIS. STAT. RULE 809.23(b)4.

¶6 Accordingly, we will not address the merits of this appeal because Sunday's plea of no contest waived any nonjurisdictional errors that may have

occurred prior to her plea, including the allegedly erroneous denial of her motion to suppress.[2]

CONCLUSION

¶7 For the reasons discussed above, we affirm the judgment of conviction.

By the Court.—Judgment affirmed.

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

[2] Sunday asserts that "the only issue that was truly in dispute was that of reasonable suspicion for the initial stop," that the Village and the trial court were well aware of her desire to appeal the issue, and that her stipulation with the Village to plead no contest and have the judgment stayed pending appeal was the most cost effective way to proceed for both herself and the Village. These assertions may well be true, but Sunday could have efficiently preserved her opportunity for an appeal by stipulating to a court trial in which the court would determine her guilt or innocence of the charge solely on documentary evidence, such as the officer's police report, the blood alcohol test report, etc. Similarly situated defendants routinely employ this mechanism in order to preserve issues for appeal.