

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 20, 2008

David R. Schanker
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. 2007AP2754-CR

Cir. Ct. No. 2006CF39

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RICHARD J. KRONBERGER,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Wood County: JON M. COUNSELL, Judge. *Reversed and cause remanded for further proceedings.*

Before Higginbotham, P.J., Dykman and Bridge, JJ.

¶1 PER CURIAM. Richard Kronberger appeals a judgment convicting him of second-degree sexual assault of a child and an order denying his motion for postconviction relief. He argues that his guilty plea was not knowingly and

voluntarily entered. We agree. Therefore, we reverse and remand for further proceedings.

¶2 Kronberger contends that he was not informed of the purpose element of the offense, either in his colloquy with the circuit court or in any of the written documents he was provided, including the plea questionnaire. Acknowledging this deficiency, the State argues that given the nature of the sex act, Kronberger implicitly understood the purpose element of the offense. We rejected this reasoning in *State v. Jipson*, 2003 WI App 222, 267 Wis. 2d 467, 671 N.W.2d 18. In *Jipson*, we held that a defendant's plea was not knowingly and voluntarily entered because the defendant had not been informed that one of the elements of the crime of second-degree sexual assault of a child was that he had sexual contact with the victim for the purpose of sexual degradation, humiliation, arousal or gratification. *Id.*, ¶1. Because *Jipson* is directly on point, we conclude that Kronberger's plea was not knowingly and voluntarily entered and he must be permitted to withdraw it. See *State v. Brown*, 2006 WI 100, ¶19, 293 Wis. 2d 594, 716 N.W.2d 906 (“[w]hen a guilty plea is not knowing, intelligent, and voluntary, a defendant is entitled to withdraw the plea as a matter of right because such a plea ‘violates fundamental due process.’”).

¶3 The State contends that Kronberger waived appellate review of his challenge to his guilty plea by virtue of having signed the plea questionnaire containing the following statement: “I further understand that the entry of this plea constitutes a waiver of any appellate review of all non-jurisdictional defects and defenses in these proceedings.” However, the waiver rule is limited in application to guilty pleas that are made knowingly and voluntarily. *State v. Aniton*, 183 Wis. 2d 125, 129, 515 N.W.2d 302 (Ct. App. 1994). Because we conclude that Kronberger's plea was not knowingly and voluntarily entered, the

waiver rule does not apply. The matter is reversed and remanded for further proceedings.¹

By the Court.—Judgment and order reversed and cause remanded for further proceedings.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5 (2005-06).

¹ Kronberger also argues that he was inaccurately informed that this crime was subject to the three-strikes law, when in fact it was a two-strikes crime because it was a serious child sex offense. Because the issue we have already addressed is dispositive, we do not consider this issue. See *Turner v. Taylor*, 2003 WI App 256, ¶1 n.1, 268 N.W.2d 628, 673 N.W.2d 716 (if a decision on one point disposes of an appeal, we will not decide the other issues raised).

