

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 28, 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. 2008AP156

Cir. Ct. No. 2006TR10043

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

CITY OF NEENAH,

PLAINTIFF-RESPONDENT,

V.

STEPHANIE A. JAMES,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Winnebago County: SCOTT C. WOLDT, Judge. *Affirmed.*

¶1 ANDERSON, P.J.¹ We do not reach the substantive issue raised by Stephanie A. James because her no contest plea to operating a motor vehicle while

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(g) (2005-06). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

intoxicated (OWI), first offense, waives her challenge that the circuit court erroneously exercised its discretion in setting aside the judgment of dismissal. Therefore, we affirm her conviction for OWI.

¶2 After receiving a citation from the City of Neenah for first offense operating while intoxicated in violation of WIS. STAT. § 346.63(1)(a), James filed a Motion Challenging Probable Cause To Stop And Arrest. The prosecutor for the City failed to appear at the evidentiary hearing scheduled in response to the motion, and the circuit court dismissed the charge, without prejudice. The City filed a timely motion to reopen and it was granted by the court. The City and James then entered a stipulation in which she entered a no contest plea to the citation and a joint recommendation for sentencing was made. Based upon this stipulation, the court entered a judgment of conviction. James seeks to appeal, asserting the court erroneously exercised its discretion in not making the judgment of dismissal with prejudice and in vacating the judgment of dismissal.

¶3 It is a general principle of law that a “guilty plea, made knowingly and voluntarily, waives all nonjurisdictional defects and defenses, including alleged violations of constitutional rights prior to the plea.” *State v. Aniton*, 183 Wis. 2d 125, 129, 515 N.W.2d 302 (Ct. App. 1994). Just as a plea of guilty, when voluntarily and understandingly made, constitutes a waiver of nonjurisdictional defects and defenses including claims of violations of constitutional rights prior to the plea, so too will a plea of no contest. *State v. Princess Cinema of Milwaukee, Inc.*, 96 Wis. 2d 646, 651, 292 N.W.2d 807 (1980). The guilty plea waiver rule applies to traffic forfeiture cases. *Racine County v. Smith*, 122 Wis. 2d 431, 437, 362 N.W.2d 439 (Ct. App. 1984).

¶4 While the City did not raise the guilty plea waiver rule in its reply brief, this court may sua sponte raise the applicability of the guilty plea waiver rule. See *State v. Olson*, 127 Wis. 2d 412, 421 n.5, 380 N.W.2d 375 (Ct. App. 1985).

¶5 We note that the guilty plea waiver rule does not deprive us of our 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 (Ct. App. 1991), *aff’d*, 172 Wis. 2d 156, 493 N.W.2d 23 (1992). We decline to deviate from the rule and consider James’ challenge to the reopening of the judgment of dismissal because it is not the type of question that tempts us.

¶6 Further, we would be obliged to conduct a course in traffic regulation procedure.² The court of appeals is a fast-paced, high-volume, error-correcting court, *State ex rel. Swan v. Elections Board*, 133 Wis. 2d 87, 93, 394 N.W.2d 732 (1986), and *State v. Pettit*, 171 Wis. 2d 627, 647, 492 N.W.2d 633, 642 (Ct. App. 1992), and is without the resources to conduct such a course. We conclude that to conserve our limited resources, James’ no contest plea waives her

² The cliff notes’ version of such a course would spotlight the following: (1) A first offense OWI is punishable by a forfeiture, WIS. STAT. § 346.65(2)(am)1; (2) Therefore, it is a violation of a “traffic regulation,” WIS. STAT. § 345.20(1)(b); (3) The procedure to be used for the trial of traffic regulation actions can be found in § 345.20(2)(a); (4) The Rules of Civil Procedure, WIS. STAT. chs. 801-07, do not apply to the trial of traffic regulation violations; (5) The statutes, WIS. STAT. §§ 345.21 to 345.53, and WIS. STAT. ch. 799, governing the procedure to be employed in traffic regulation actions are silent as to whether dismissal is with or without prejudice; (6) Because there is no procedure for reopening of judgment of dismissal in §§ 345.21 to 345.53, the procedure in WIS. STAT. § 799.29(1) is applicable; and (7) The reopening of the judgment of dismissal is a discretionary act for the circuit court. See *Dugenske v. Dugenske*, 80 Wis. 2d 64, 68, 257 N.W.2d 865 (1977).

right to seek appellate review of the trial court's reopening of the judgment of dismissal.

By the Court.—Judgment affirmed.

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

