

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

December 21, 1995

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(1), STATS.

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

**No. 94-3244**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

**STATE OF WISCONSIN,**

**Plaintiff-Respondent,**

**v.**

**JOSE M. ALDAZABAL,**

**Defendant-Appellant.**

APPEAL from an order of the circuit court for Dane County:  
JACK F. AULIK, Judge. *Affirmed.*

Before Eich, C.J., Gartzke, P.J., and Vergeront, J.

PER CURIAM. Jose Aldazabal appeals from an order denying his motion for postconviction relief. The issue is whether Aldazabal's double jeopardy rights were violated when he was convicted of delivery of cocaine within 1,000 feet of a community center. Because we conclude that there was no double jeopardy violation, we affirm.

Aldazabal was charged with delivery of a controlled substance within 1,000 feet of a community center, as a repeater, on July 23, 1992. On November 30, 1992, the trial court granted the State's motion to dismiss because the State was unable to locate an important witness. Six months later, Aldazabal was recharged with the same offense. After a jury trial, Aldazabal was convicted and sentenced to ten years' imprisonment.

Aldazabal, proceeding pro se, contends that his double jeopardy rights were violated because he was recharged after the first case was dismissed. In determining whether a double jeopardy violation occurred, the determinative moment is that at which jeopardy attaches, for that is "the lynchpin for all double jeopardy jurisprudence." *Crist v. Bretz*, 437 U.S. 28, 38 (1978) (citation omitted). Jeopardy does not attach in a jury trial until the jury is sworn. Section 972.07(2), STATS. Because the jury was not sworn before the first case was dismissed, jeopardy never attached. There was no double jeopardy violation.

Aldazabal next argues that his double jeopardy rights were violated because his parole was revoked when the first charge was brought. "Jeopardy, in the constitutional sense, denotes the risks traditionally associated with criminal prosecution and with proceedings to invoke criminal punishment for the vindication of public justice." *State ex rel. Flowers v. DHSS*, 81 Wis.2d 376, 383, 260 N.W.2d 727, 732 (1978). "This risk is absent from proceedings which are not `essentially criminal.'" *Id.* (citation omitted). Parole revocation proceedings are not "essentially criminal" because "[t]he element of punishment in parole revocation is attributable to the crime for which the parolee was originally convicted and sentenced." *Id.* at 386, 260 N.W.2d at 733. There was no double jeopardy violation.

*By the Court.* – Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.