

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

January 24, 1996

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.

NOTICE

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

**Nos. 95-2549-CR
95-2551-CR
95-2552-CR**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JOHN W. GRULICH,

Defendant-Appellant.

APPEAL from judgments of the circuit court for Kenosha County:
BARBARA A. KLUKA, Judge. *Affirmed.*

NETTESHEIM, J. John W. Grulich appeals from criminal judgments of conviction for his fifteenth and sixteenth operations of a motor vehicle after revocation and for bail jumping. The convictions result from

Grulich's pleas of guilty to the charges following the trial court's denial of his motion to dismiss the charges.¹

On appeal, Grulich contends that the underlying revocations upon which his convictions are premised were for his failure to pay a forfeiture. Based upon § 343.44(2)(e)2, STATS., and *State v. Muniz*, 181 Wis.2d 928, 512 N.W.2d 252 (Ct. App. 1994), which forbid a criminal prosecution if the underlying revocation or suspension was imposed for a failure to pay a fine or forfeiture, Grulich argues that the trial court erred by refusing to dismiss the complaints.

However, § 343.44(2)(e)2, STATS., provides that the underlying revocation or suspension must have been imposed “solely due to a failure to pay a fine or a forfeiture.” (Emphasis added.) And, *State v. Biljan*, 177 Wis.2d 14, 501 N.W.2d 820 (Ct. App. 1993), holds that if the defendant's failure to pay a fine or forfeiture is not the sole basis for the revocation or suspension, the bar against a criminal prosecution set out in § 343.44(2)(e) does not apply.

Here, the State explains, and the record documents, that Grulich's underlying revocation is based not only on his prior failure to pay a fine or forfeiture, but also on other convictions and the Department of Transportation's

¹ The State does not argue that Grulich is barred from taking this appeal because of his guilty pleas. We therefore do not address any possible waiver issue.

further revocation based on its determination that Grulich is a habitual traffic offender. Thus, Grulich's revoked status was not solely based on his failure to pay a fine or forfeiture.

By the Court. – Judgments affirmed.

This opinion will not be published.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