

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

March 28, 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.

No. 95-2907

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

COUNTY OF JEFFERSON,

Plaintiff-Respondent,

v.

MATTHEW RILEY,

Defendant-Appellant.

APPEAL from an order of the circuit court for Jefferson County:
ARNOLD SCHUMANN, Judge. *Affirmed.*

SUNDBY, J. Defendant-Appellant Matthew Riley appeals from an order entered July 26, 1995, denying his motion to vacate the judgment convicting him of violating § 346.57(4)(h), STATS. (speeding).¹ Riley discovered that after he had entered a no contest plea pursuant to a stipulation with the district attorney that his operating privilege was revoked as an habitual traffic offender under § 351.025, STATS. He argues that his lack of knowledge as to the

¹ This appeal is decided by one judge pursuant to § 752.31(2)(c), STATS. "We" and "our" refer to the court.

effect of his plea permitted the trial court to reopen the judgment, pursuant to §§ 345.51 and 806.07(1)(h), STATS. Riley argues that the trial court erroneously exercised its discretion because it made an error of law when it concluded that *Lewandowski v. State*, 140 Wis.2d 405, 411 N.W.2d 146 (Ct. App. 1987), compelled it to deny Riley's motion. Riley claims that the trial court did not consider whether he had shown "good cause" to reopen the judgment.

We disagree with Riley's view of the court's oral decision. In response to Riley's argument that the trial court could and should exercise its discretion to reopen the judgment under § 806.07(1)(h), STATS., the trial court responded:

My response would be that I hesitate to ... use my discretion in this instance to recognize any collateral consequence [the administrative revocation] as something that should permit the defendant to withdraw his plea and to set aside his conviction. I guess when I look at a dozen violations ..., it's probably appropriate that he be found to be an habitual traffic offender.... I'm not so sure that in the interest of justice that it is appropriate that this defendant should be allowed to say, well, I didn't know it was my twelfth.... So is that a factor? I didn't know this was my twelfth conviction? ... I believe under *Lewandowski* that there was no duty to inform the defendant of [the administrative revocation]. If he proceeded to plead and he lacked some knowledge at the time he pled, it was his duty to have that knowledge. It was not somebody else's duty to inform him. And I do not want to exercise my discretion in such a way to reopen when a defendant is lacking certain knowledge about collateral matters because that concerns me. ... I could be opening a tremendous amount of litigation

So I reiterate that I believe it is inappropriate to set aside this conviction and vacate the judgment. [I'm] trying to exercise the discretion being fair to both

sides, but I think under these circumstances that's something Mr. Riley should have known or been aware of. And if he was not, ... it may have affected his desire to plead ...[.] [Y]es, there may have been some mistake and perhaps on both sides in not anticipating the result; but that is ... a result which I think is preferable to permitting collateral attack, if you will, on judgments which have been entered on the basis of, ["I didn't know all the things that might happen to me when I was convicted.["]

The trial court demonstrated that it understood the holding in *Lewandowski*. We concluded that a judge is not required to give notice to a defendant that a conviction for a traffic offense could lead to classification as an habitual traffic offender under § 351.02, STATS. 140 Wis.2d at 408, 411 N.W.2d at 148.

The trial court also demonstrated that it realized it could exercise its discretion to reopen the judgment. However, it found that "inappropriate." The court expressed its opinion that it believed that Riley should have been aware of the number of convictions he had for violating traffic laws. In these circumstances, the trial court concluded that requiring him to live with the consequences of his own acts was preferable to permitting a collateral attack on the judgment. We conclude that the trial court correctly exercised its discretion.

By the Court. – Order affirmed.

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