

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 5, 2006

Cornelia G. Clark
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. 2006AP675-CR

Cir. Ct. No. 2005CT60

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CURTIS D. DEERING,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Bayfield County:
JOHN P. ANDERSON, Judge. *Affirmed.*

¶1 PETERSON, J.¹ Curtis Deering, pro se, appeals a judgment of conviction for operating with a prohibited alcohol concentration. Deering argues

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

his criminal conviction violated the double jeopardy clause because he had already received a civil conviction for the same offense. Because the trial court lacked the jurisdiction to try Deering's third offense as a first offense, the court properly dismissed the civil conviction, there was no prior adjudication, and jeopardy did not attach. We therefore affirm.

BACKGROUND

¶2 On April 15, 2005, Deering was arrested for operating while under the influence of an intoxicant and operating with a prohibited alcohol concentration. Deering was initially charged with a first offense and received a civil forfeiture in June 2005. The district attorney's office then received information from the Department of Transportation indicating Deering had two previous convictions in Maine. The court then reopened and dismissed the civil conviction so the State could charge Deering criminally.²

¶3 On March 2, 2006, Deering waived his right to a jury trial and his case was tried to the court. At trial, Deering argued the court lacked jurisdiction to try him because he had already been convicted civilly for the same offense. The court rejected Deering's argument stating "the original conviction was without the authority of the Court" and was therefore void. Deering was then found guilty of operating with a prohibited alcohol concentration, and the court dismissed the operating while intoxicated charge.

² The record does not contain the original civil conviction or a record of its dismissal. However, both parties agree the conviction was dismissed and the court states in the criminal hearing that the original conviction was void.

DISCUSSION

¶4 Deering argues his criminal conviction violated the double jeopardy clause because he had already received a civil conviction for the same offense. This presents a question of law we decide without deference to the trial court. *State v. Thierfelder*, 174 Wis. 2d 213, 218, 495 N.W.2d 699 (1993).

¶5 A trial court has no jurisdiction over a second or subsequent drunk driving offense as a first offense. *Walworth County v. Rohner*, 108 Wis. 2d 713, 722, 324 N.W.2d 682 (1982). This case is controlled by *Rohner* which holds that where a case is dismissed for lack of subject matter jurisdiction there is no valid adjudication and jeopardy does not attach. *Id.* Deering admits the civil conviction was dismissed.³ Therefore, because the first offense adjudication was not valid and the court dismissed the case, jeopardy did not attach.⁴ *Id.*

¶6 To the extent Deering raises other issues, the issues are insufficiently developed to merit review. Pro se litigants are “bound by the same rules that apply to attorneys on appeal.” *Waushara County v. Graf*, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992). This court need not address issues so lacking in organization and substance that for the court to decide the issues, it would first

³ However, Deering argues the court should have been “set judgment aside.” Deering cites WIS. STAT. § 974.06(3) which deals with postconviction procedure after the time for appeals and post-conviction remedies under WIS. STAT. § 974.02 have expired. This statute is inapplicable to the facts of this case. Further, Deering provides no information regarding how “setting aside” his civil conviction would have produced a different result than dismissing the conviction.

⁴ Deering also appears to argue the State waived its right to dismiss the civil case because it should have discovered the prior convictions before the civil trial. This argument ignores the holding in *Walworth County v. Rohner*, 108 Wis. 2d 713, 722, 324 N.W.2d 682 (1982). The court did not have jurisdiction to try Deering’s case as a first offense. *See id.*

have to develop them. *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).

By the Court.—Judgment affirmed.

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

