

IN THE COURT OF APPEALS OF IOWA

No. 9-181 / 98-0769

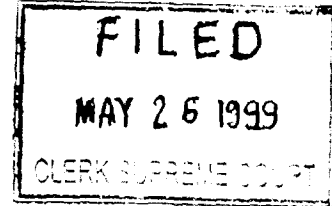
CALVIN LEE ZOMER,

Appellant,

vs.

IOWA DEPARTMENT OF TRANSPORTATION,  
MOTOR VEHICLE DIVISION,

Appellee.



---

Appeal from the Iowa District Court for Lyon County, Charles H. Barlow,  
Judge.

Petitioner appeals from the district court's ruling on judicial review affirming respondent's revocation of petitioner's driver's license pursuant to Iowa Code section 321J.4(3) (1997). **AFFIRMED.**

Randy L. Waagmeester of DeWaay & Waagmeester, Rock Rapids, for  
appellant.

Thomas J. Miller, Attorney General, David A. Ferree, Special Assistant  
Attorney General, and Kerry Anderson, Assistant Attorney General, for appellee.

Heard by Sackett, C.J., and Huitink and Zimmer, JJ.

**ZIMMER, J.**

Calvin Zomer appeals from the district court's ruling on judicial review affirming the Iowa Department of Transportation's ("IDOT") revocation of his driver's license pursuant to Iowa Code section 321J.4(3) (1997) after he received a deferred judgment in a prosecution for operating while intoxicated under Iowa Code chapter 321J. He contends the administrative revocation of his driver's license following a deferred judgment violates the double jeopardy clause prohibition against multiple punishments and improperly interfered with the district court's sentencing jurisdiction regarding the entry of deferred judgments. We affirm the decision of the district court.

*I. Factual Background.* In June 1997, Calvin Zomer was arrested and charged with operating a motor vehicle while intoxicated in violation of Iowa Code section 321J.2 (1997). Zomer agreed to submit to breath testing which showed a blood alcohol concentration of .091%. Following a finding of guilt on the operating while intoxicated charge, Zomer was granted a deferred judgment by the district court on August 15, 1997. After receiving notice of the deferred judgment, IDOT revoked Zomer's driving privileges for ninety days under authority of Iowa Code sections 321J.4(3) and 321A.17. Zomer filed a petition for judicial review challenging IDOT's revocation. Following hearing, the district court dismissed his petition for judicial review and affirmed the revocation of his driving privileges. Zomer filed a timely notice of appeal.

*II. Double Jeopardy.* Zomer rests his first argument on application of the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution. We review such constitutional claims de novo. *Dressler v. Iowa Dep't of Transp.*, 542 N.W.2d 563, 565 (Iowa 1996).

In this case Zomer's license was revoked pursuant to Iowa Code section 321J.4(3) (Supp. 1997). That section states in pertinent part:

If the court defers judgment pursuant to section 907.3 for a violation of section 321J.2, and if the defendant's motor vehicle license or nonresident operating privilege has not been revoked under section 321J.9 or 321J.12, or has not otherwise been revoked for the occurrence from which the arrest arose, the department (of transportation) shall revoke the defendant's motor vehicle license or nonresident operating privilege . . . .

Zomer contends the revocation of his license constitutes double jeopardy. We disagree. "The (Double Jeopardy) Clause protects only against the imposition of multiple *criminal* punishments for the same offense." *Hudson v. United States*, 522 U.S. 93, 99, 118 S. Ct. 488, 493, 139 L. Ed. 2d 450, 458 (1997) (citing *Helvering v. Mitchell*, 303 U.S. 391, 399, 58 S. Ct. 630, 633, 82 L. Ed. 917, 922 (1938)). Our Iowa Supreme Court has held that the "purpose of the implied consent law is to reduce the holocaust on our highways, part of which is due to the driver who imbibes too freely of intoxicating liquor." *Severson v. Sueppel*, 260 Iowa 1169, 1174, 152 N.W.2d 281, 284 (1967); accord *State v. Green*, 470 N.W.2d 15, 18 (Iowa 1990); *State v. Schlemme*, 301 N.W.2d 721, 723 (Iowa 1981).

More recently, the Iowa Supreme Court has held administrative license revocations do not constitute punishment for double jeopardy purposes. See *State v.*

*Vogel*, 548 N.W.2d 584, 587 (Iowa 1996) (revocation under section 321J.9 based on refusal to submit to chemical testing was remedial, not punishment); *State v. Kocher*, 542 N.W.2d 556, 558 (Iowa 1996) (revocation under section 321J.12 based on result of chemical test was not punishment); *State v. Funke*, 531 N.W.2d 124, 126–27 (Iowa 1995) (license suspension based on habitual offender status held remedial, not punitive).

In this case, revocation was pursuant to section 321J.4(3). Zomer attempts to distinguish his situation from prior case law by arguing no remedial purpose is served by revoking the license of an individual who has received a deferred judgment. We agree with the district court's conclusion that this contention is not a persuasive basis for distinguishing *Kocher* and *Vogel*. Although Zomer argues he was not driving while drunk, the record does not support this conclusion. The district court record suggests Zomer was found guilty of operating while intoxicated in violation of Iowa Code section 321J.2 by virtue of a plea of guilty before his deferred judgment order was entered. As noted above, the Iowa Supreme Court has repeatedly recognized the correlation between drunk drivers and highway injuries and deaths, and has held administrative license revocations involving drunk drivers are remedial in nature rather than punitive.

Further analysis confirms Iowa Code section 321J.4(3) does not run afoul of the prohibition against double jeopardy. The United State Supreme Court recently re-examined the issue of double jeopardy in *Hudson v. United States*. In *Hudson*, the court stated as follows:

Whether a particular punishment is criminal or civil is, at least initially, a matter of statutory construction. A court must first ask whether the legislature, “in establishing the penalizing mechanism, indicated either expressly or impliedly a preference for one label or the other.” Even in those cases where the legislature “has indicated an intention to establish a civil penalty, we have inquired further whether the statutory scheme was so punitive either in purpose or effect,” as to “transfor[m] what was clearly intended as a civil remedy into a criminal penalty.”

*Hudson v. United States*, 522 U.S. at 99, 118 S. Ct. at 493, 139 L. Ed. 2d at 459.

(citations omitted). The court noted seven factors may be considered in determining the second inquiry:

(1) [w]hether the sanction involves an affirmative disability or restraint; (2) whether it has historically been regarded as a punishment; (3) whether it comes into play only on a finding of *scienter*; (4) whether its operation will promote the traditional aims of punishment-retribution and deterrence; (5) whether the behavior to which it applies is already a crime; (6) whether an alternative purpose to which it may rationally be connected is assignable for it; and (7) whether it appears excessive in relation to the alternative purpose assigned. It is important to note, however, that these factors must be considered in relation to the statute on its face, and only the clearest proof will suffice to override legislative intent and transform what has been denominated a civil remedy into a criminal penalty.

*Id.* (citing *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168–169, 83 S. Ct. 554, 567–568, 9 L. Ed. 2d 644, 660–661 (1963)) (citations and quotations omitted).

The driver’s license revocation in this case clearly involves an affirmative restraint — the loss of driving privileges — and behavior which is already a crime — drunk driving. However, civil driver’s license revocation under the implied consent law has long been regarded not as a punitive measure meant to punish the driver, but rather as a remedial measure meant to protect the public. Further, there is no requirement of a finding of *scienter* prior to imposition of a civil driver’s license

revocation. A revocation is automatic under section 321J.4(3) when an individual has received a deferred judgment for OWI and has not otherwise had his or her driver's license revoked. Finally, we conclude a short-term driver's license revocation is not an excessive sanction under the circumstances. When analyzed under the standards set forth in *Hudson*, we conclude the revocation of Zomer's license was civil and remedial, not criminal and punitive. Accordingly, we conclude the civil license revocation provided for in Iowa Code section 321J.4(3) does not violate constitutional prohibitions regarding double jeopardy.

*III. Interference with the District Court's Sentencing Authority.* Zomer contends IDOT's revocation of his driver's license impermissibly interferes with the district court's statutory sentencing authority. In support of his contention, he relies upon *Iowa Beer & Liquor Control Dep't v. McBlain*, 263 N.W.2d 226 (1977). We find this argument to be without merit.

In *McBlain*, the Supreme Court held a deferred sentence on a charge of selling beer to a minor did not constitute a "conviction" as was statutorily required prior to the beer and liquor control department suspending the defendant's liquor license. In *McBlain*, the agency was granted statutory authority to suspend a license only on a "conviction" of certain charges. In the present case, IDOT is specifically charged in Iowa Code section 321J.4(3) with the responsibility to revoke a driver's license in the event an individual has been granted a deferred judgment for an OWI violation and his or her license has not otherwise been revoked.

Zomer appears to contend that legislation requiring revocation of a driver's license by IDOT after the department has been notified of an OWI deferred judgment constitutes a violation of the separation of powers principle embodied in article III, section 1 of the Iowa Constitution.<sup>1</sup> We disagree. Section 321J.4(3) of the code does not prevent a district court from granting a deferred judgment in an OWI prosecution. The statute merely directs the department to enter a civil license revocation in the event a defendant receives a deferred judgment and has not otherwise had his or her license revoked.

Further, even if the provisions of the statute were deemed a limitation on judicial discretion, the Iowa Supreme Court has rejected the argument that such provisions violate the separation of powers. *See State v. Holmes*, 276 N.W.2d 823, 830 (Iowa 1979). In *Holmes*, the Supreme Court addressed the issue of whether mandatory minimum sentencing, with no option of probation, was a violation of the separation of powers because it limited judicial authority to exercise discretion in sentencing. The court concluded there is no inherent power of a court to grant probation. Because that power is statutorily conferred, the statutory preclusion of probation did not infringe on judicial authority. *Id.*

---

<sup>1</sup> Article III, section 1 provides:

The powers of the government of Iowa shall be divided into three separate departments — the legislative, the executive, and the judicial — and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any function appertaining to either of the others, except in cases hereinafter expressly directed or permitted.

We believe the same rationale holds true for deferred judgments. The courts have no inherent authority to grant deferred judgments. Thus, the legislature's grant of license revocation authority to IDOT does not infringe upon inherent judicial authority and, therefore, does not violate the separation of powers clause of the Iowa Constitution.

Finally, Zomer suggests IDOT's revocation without hearing is unconstitutional, yet he fails to indicate which constitutional provision is implicated or how it is violated. Constitutional challenges must be specific. Accordingly, this argument must fail. *See Cyclone Sand & Gravel v. Zoning Bd. of Adjustment*, 351 N.W.2d 778, 783 (Iowa 1984).

Even if we were to consider this argument as a contention that due process requirements have been violated, Zomer would not prevail. Due process does not require an evidentiary hearing in cases in which there are no relevant factual disputes between the parties. *See Sioux Electric Co-Operative Ass'n v. Iowa State Commerce Comm'n*, 420 N.W.2d 490, 492 (Iowa 1988). Here Zomer contends the department did not have to prove he was guilty of the elements of operating while intoxicated and merely assumed his guilt and subjected him to an unconstitutional revocation of his license. Zomer admitted his guilt by pleading guilty to the OWI charge. Under these circumstances, neither Iowa Code section 321J.4(3) nor the constitution require an evidentiary hearing.



The decision of the district court dismissing Zomer's petition for judicial review and affirming the revocation of his driving privileges is affirmed.

**AFFIRMED.**

**No. 98-0769. [9-181] ZOMER v. IOWA DEPARTMENT OF TRAN.**

Appeal from the Iowa District Court for Lyon County, Charles H. Barlow, Judge. **AFFIRMED.** Heard by Sackett, C.J., and Huitink and Zimmer, JJ. Opinion by Zimmer, J. (9 pages \$3.60)

Zomer appeals from the district court's ruling on judicial review affirming the Iowa Department of Transportation's ("IDOT") revocation of his driver's license pursuant to Iowa Code section 321J.4(3) (1997) after he received a deferred judgment

in a prosecution for operating while intoxicated under Iowa Code chapter 321J. **OPINION HOLDS: I. Double Jeopardy.** Zomer rests his first argument on application of the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution. Zomer contends the revocation of his license constitutes double jeopardy. We disagree. "The (Double Jeopardy) Clause protects only against the imposition of multiple *criminal* punishments for the same offense." The Iowa Supreme Court has repeatedly recognized the correlation between drunk drivers and highway injuries and deaths, and has held administrative license revocations involving drunk drivers are remedial in nature rather than punitive. Furthermore, when analyzed under the standards set forth in *Hudson v. United States*, 522 U.S. 93, 99, 118 S. Ct. 488, 493, 139 L. Ed. 2d 450, 458 (1997), we conclude the revocation of Zomer's license was civil and remedial, not criminal and punitive. The civil license revocation provided for in Iowa Code section 321J.4(3) does not violate constitutional prohibitions regarding double jeopardy. **II. Interference with the District Court's Sentencing Authority.** Zomer contends IDOT's revocation of his driver's license impermissibly interferes with the district court's statutory sentencing authority and violates the separation of powers principle embodied in article III, section 1 of the Iowa Constitution. We disagree. Section 321J.4(3) of the code does not prevent a district court from granting a deferred judgment in an OWI prosecution. Furthermore, the courts have no inherent authority to grant deferred judgments. Thus, the legislature's grant of license revocation authority to IDOT does not infringe upon inherent judicial authority and, therefore, does not violate the separation of powers clause of the Iowa Constitution.