FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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STATE OF IOWA,	)	
Plaintiff-Appellee,	)	
vs.	)	
GAYLORD FRANK AUGUSTINE,	)	8-11 87-352
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Johnson County (No. 17915) - John R. Sladek, District Associate Judge.

The defendant appeals from his conviction, following a jury trial, for OWI. **AFFIRMED.**

Charles Harrington, Appellate Defender, and James W. Whalen, Assistant Appellate Defender, for the defendant-appellant.

Thomas J. Miller, Attorney General; Daniel W. Perkins, Assistant Attorney General; and David W. Tiffany, Assistant County Attorney, for the plaintiff-appellee.

Considered by Oxberger, C.J., and Donielson and Schlegel, JJ.

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OXBERGER, C.J.

This is an appeal from defendant's conviction, following a jury trial, for operating while under the influence of alcohol (OWI) in violation of Iowa Code section 321J.2 (1987). Defendant contends his trial attorney rendered ineffective assistance of counsel. Defendant also challenges the district court's revocation of his license for six years pursuant to Iowa Code section 321J.4(3)(a). Our scope of review is de novo as the defendant asserts the deprivation of his constitutional rights. Taylor v. State, 352 N.W.2d 683, 684 (Iowa 1984). We affirm.

On August 30, 1986, the defendant was stopped and upon failing various field sobriety tests performed at the request of an Iowa City police officer, the defendant was arrested for operating under the influence. After being transported to the Johnson County Jail, the defendant took a breath test with a result of .308.

At trial the state introduced a lab report showing that CMI Intoxilyzer with serial number 27-101057 was certified to be in working order and properly calibrated on March 6, 1986. This certification was valid for one year. The State also introduced into evidence the intoxilyzer card revealing the results from the defendant's test. The card indicated the machine which was used was number 128871. Defendant claims that his attorney's failure to object to the admission of the evidence from the breath test, given

the discrepancy in identification numbers, resulted in a denial of effective assistance of counsel.

On February 20, 1987 at 11:00 a.m. the court's judgment and sentence was filed with the clerk of court. Later that afternoon an order was filed revoking the defendant's driver's license for six years pursuant to Iowa Code section 321J.4(3)(a).

This case presents two issues: (1) whether the defendant was denied effective assistance of counsel; and (2) whether Iowa Code section 321J.4(3)(a) requires that revocation be a part of the pronouncement of sentencing.

I.

In order to establish a case of ineffective assistance of counsel a defendant must prove (1) that counsel failed to perform an essential duty, and (2) that prejudice resulted. State v. Yaw, 398 N.W.2d 803, 805 (Iowa 1987); State v. Krause, 397 N.W.2d 671, 673 (Iowa 1986).

Defendant asserts that he was denied effective assistance of counsel when his attorney did not object to the admission of testimony and exhibits concerning the results of the defendant's breath test. The defendant argues that his trial attorney should have objected on the grounds that the State failed to prove that the intoxilyzer machine which was used to test the defendant was certified to be in proper working order and properly calibrated. The basis for the defendant's argument is that State's exhibits 2 and

3 show proper calibration and operation of intoxilyzer with serial number 27-101057, but that State's exhibit 4 (an evidence card obtaining the test results of defendant's breath test) indicates that defendant's breath was tested by intoxilyzer with serial number 218871. (Emphasis added.)

Admission of the results of a breath test requires proof (1) of the devices and methods approved by the Commissioner of Public Safety, and (2) proof that the test was given by use of the approved devices and methods. State v. Young, 232 N.W.2d 535, 537 (Iowa 1975).

The Iowa Supreme Court ordered a limited remand to allow the district court to make findings concerning which of the two intoxilyzer machines was used to test the defendant's breath. The district court found that despite the discrepancy in identification numbers, the same machine which was certified was the machine which was used to test the defendant's breath. Thus we find that the intoxilyzer was properly identified at trial and any failure to object to the admission of evidence from the breath test was not a failure to perform an essential duty and did not result in ineffective assistance of counsel.

II.

Iowa Code section 321J4(3)(a) provides in part:

> Upon a plea or verdict of guilty of a third or subsequent violation of section 321J.2, the court shall order the department to revoke the defendant's motor vehicle license or nonresident privilege for a period of six years.

Defendant contends that the revocation of his license is invalid because (1) it was not timely filed and should have been filed with the sentence; (2) he was not given notice or an opportunity to be heard; and (3) the order was made without record that the defendant had the requisite number of prior convictions.

Iowa Code section 321J.4(3)(a) was previously codified in Iowa Code section 321.281(9)(a). Compare Iowa Code § 321J.4(3)(a) (1987) with Iowa Code § 321.281 (9)(a) (1985). Statutes relating to the same subject matter, or closely allied subjects, may properly be construed, considered and examined in the light of their common purposes and intent. State v. Peterson, 347 N.W.2d 388, 402 (Iowa 1984). Section 321.281(9)(a) has been construed by the Iowa Supreme Court as a statute requiring the court to perform the first step in the civil revocation of a driver's license and not a sentencing statute which provides guidance for the imposition of a penalty. The court further stated that:

> [s]ubsection 321.281(9)(a) requires the court to order revocation upon a plea or verdict of guilty of a third offense, but does not require the revocation be a part of the pronouncement of sentencing.

State v. Blood, 360 N.W.2d 820, 822 (Iowa 1985).

Thus, we find the trial court did not err in ordering revocation of defendant's license at a time other than the time of sentencing.

Under section 321J.4(3)(a), revocation is mandatory. In Shaw v. Department of Public Safety, the court held that when there is a revocation of a driver's license by the Department, no notice or hearing is required because the right to appeal to the court is available. 257 Iowa 30, 34, 131 N.W.2d 261, 264 (1964). Similarly, when the district court orders a revocation, no hearing or notice is required as the defendant is availed of the remedy of filing a motion in arrest of the judgment. Further, we find the record reveals defendant's past record of offenses to support a six-year revocation of his license. Mr. Augustine's past offenses include three prior OWI's over the last fifteen years, as well as fifteen other alcohol-related charges in the last six years.

We do not find grounds for a claim of ineffective assistance of counsel. Further, we find no error in the trial court's revocation of defendant's license at a different time from sentencing.

AFFIRMED.