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CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA, )
Plaintiff-Appellee, ) Filed September 20, 1979
vs. )
JON ANDREW WHITE, ) 216
Defendant-Appellant. ) 2-62489

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Appeal from Iowa District Court - John L. Hyland, Judge.

Defendant appeals from an adjudication that he was an habitual traffic offender as defined in section 321.555(1), The Code. AFFIRMED.

Ralph W. Koons, Cedar Rapids, Iowa, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa; Lona Hansen, Assistant Attorney General; and Kenneth R. Martens, Iowa County Attorney; for plaintiff-appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Defendant appeals from an adjudication that he was an habitual traffic offender as defined in section 321.555(1), The Code 1977, and that, as provided in sections 321.559 and 321.560, The Code, he surrender his operator's license and be barred from obtaining one for six years.

The issue presented is whether the record supports the trial court's finding that defendant accumulated three convictions within a six year period of the traffic offenses which are designated in section 321.555(1). If so, defendant is an "habitual offender" and subject to the penalties imposed. As to two of the three offenses involved, there is no dispute between the parties. On August 17, 1976, defendant was convicted of speeding, an infraction which occurred while his license was under suspension. This is an offense designated in section 321.555(1)(g). On February 23, 1977, defendant was convicted of operating a motor vehicle while under the influence of an alcoholic beverage. This is an offense designated in section 321.555(1)(b).

It is the claim of the State that defendant also was convicted of one or more traffic violations while his license was mandatorily revoked as a result of the February 23, 1977 OMVUI conviction. Defendant contends that each of these violations occurred prior to the finality of that conviction. In Maguire v. Fulton, 179 N.W.2d 508, 512 (Iowa 1970), it was held that for purposes of mandatory license revocation under section 321.209 (the statute under which defendant's license was revoked), a conviction is not final until the avenues of appeal have been exhausted and that revocation under section 321.209 is not authorized prior to that time. In the present case, defendant immediately appealed the February 23, 1977 conviction. It was affirmed by the supreme court on January 18, 1978. Procedendo issued on February 9, 1978.

One of the traffic offenses relied upon by the State occurred on March 1, 1977. We conclude that under Macquire v. Fulton, any purported revocation of defendant's operator's license at that time was premature and therefore section 321.555(1)(g) is inapplicable to that offense. The other offenses relied upon by the State occurred on March 15, 1978, March 20, 1978, and April 10, 1978, respectively. These offenses were subsequent to the effective date of the revocation ordered by the Department of Transportation following the affirmance of defendant's OMVUI conviction. We conclude that each of these violations falls within section 321.555(1)(g) and that the trial court's judgment was correct.

We reject defendant's contention that his failure to receive notice of the effective date of the revocation prior to these offenses renders section 321.555(1)(g) inapplicable. This argument is contrary to the interpretation placed on section 321.209 in State v. Sonderleiter, 251 Iowa 106, 109, 99 N.W.2d 393, 395 (1959). Moreover, on the facts of the present case, defendant had been notified in March of 1977 that the Department of Transportation intended to revoke his license as a result of the OMVUI conviction and he took steps to forestall this from happening while his appeal was pending. He was bound to take notice of the disposition of his appeal and recognize the consequences of that action on his operator's status.

AFFIRMED.