IN THE COURT OF APPEALS OF IOWA

No. 3-665 / 93-874

FILED
JAN 25 1994
CLERK SUPREME COURT

STATE OF IOWA,

Plaintiff-Appellee,

vs.

JOHN P. HICKEY,

Defendant-Appellant.

Appeal from the Iowa District Court for Buchanan County, Richard R. Gleason and Randall J. Nigg, District Associate Judges.

John Hickey appeals from his conviction for driving while his motor vehicle license was revoked in violation of Iowa Code sections 321J.21 and 321J.17 (1991).

AFFIRMED.

Linda Del Gallo, State Appellate Defender, and Kevin Cmelik, Assistant State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General, Mary Tabor, Assistant Attorney General, Allan W. Vanderhart, County Attorney, and Joel Dryer, Assistant County Attorney, for appellee.

Considered by Sackett, P.J., Habhab, J. and Peterson, S.J.*

*Senior judge from the 1st Judicial District serving on this court by order of the Iowa Supreme Court.

SACKETT, J.

Defendant-appellant John P. Hickey appeals following his conviction of driving while his motor vehicle license was revoked in violation of Iowa Code sections 321J.21 and 321J.17 (1991). We affirm.

Defendant was stopped while driving a motor vehicle on November 29, 1992, for not wearing a seat belt when he, in fact, was wearing his seat belt. The officer stopping defendant asked defendant for his driver's license. Defendant told the officer he had no license. Defendant was given a citation for driving while his motor vehicle license was revoked in violation of Iowa Code 321J.21. The citation was filed with an accompanying complaint that stated defendant's license had been revoked on September 11, 1991, and he had not paid a $100 victim reparation fee.

A trial information was filed on December 14, 1992, charging defendant with driving while his motor vehicle license was revoked under an implied consent revocation in violation of Iowa Code section 321J.21. Defendant's attorney filed a motion challenging the stop and claimed warrantless arrest. A second motion to dismiss was filed premised on an alleged violation of defendant's right to a speedy trial. The ruling on both motions was against defendant's position.

The matter was then submitted to the trial court on the minutes of testimony. The minutes of testimony recited the facts relevant to the stop. The minutes of testimony showed the custodians of records of the Department of

Transportation would testify that "records show that on September 11, 1991, Defendant was placed on revocation under Chapter 321J of the Code of Iowa; that the Defendant received notice of said action on August 21, 1991"[1]; and, "that on November 29, 1992[2] Defendant's privilege to drive was still revoked." This was the entire record. Defendant was found guilty of driving while his license to drive was revoked pursuant to Iowa Code section 321J.21 and 321J.17.

Defendant contends, on appeal, his conviction was not supported by substantial evidence. Defendant argues the suspension period had passed and he was entitled to reinstatement before the date he received the citation. He claims the only reason his license was not reinstated was he had not paid the reinstatement fee. Defendant contends, therefore, he was only guilty of operating without a valid driver's license. Defendant admits the record does not show the reason his license to operate a motor vehicle had been revoked. He argues the only conclusion that can be drawn is the revocation period would have expired and reinstatement was available to him so he was cited for driving while his license to drive a motor vehicle was suspended. Defendant contends his circumstances, therefore, would have been similar to the circumstances of

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1. This statement is taken from the minutes of testimony and gives no hint of what action the defendant received notice of on August 21, 1991.

2. This was the date defendant was picked up.

the driver in State v. Webb, 493 N.W.2d 868 (Iowa App. 1992). In Webb, the failure to pay the $100 penalty required by section 321J.17 for reinstatement of a license did not extend the license revocation period. Webb, 493 N.W.2d at 871. A person who drives after the revocation period has expired, but has not applied for reinstatement and paid the $100, is not driving while his or her license to operate a motor vehicle is revoked. See id.

Defendant did not raise the error he relies on for reversal at the district court level. We will not consider errors raised for the first time on appeal. Matters not raised in the trial court will not be considered on appeal. See Connor v. State, 362 N.W.2d 449, 457 (Iowa 1985); State v. Lyon, 223 N.W.2d 193, 194 (Iowa 1974).

Defendant contends his trial counsel was not effective in failing to raise the issue at the trial court level. We preserve defendant's right to raise this issue in a postconviction procedure.

AFFIRMED.