

IN THE COURT OF APPEALS OF IOWA

No. 1-538 / 91-434

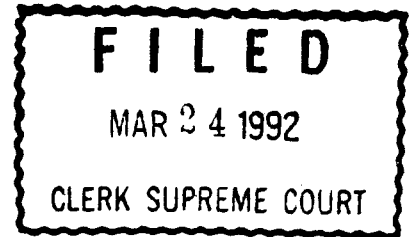
STATE OF IOWA,

Appellee,

vs.

LARRY JAMES LYONS,

Appellant.



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Appeal from the Iowa District Court for Polk County,
Thomas A. Renda, Judge.

Lyons appeals his conviction and sentence of operating a motor vehicle while intoxicated, first offense, following his guilty plea. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.**

Linda Del Gallo, State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General, Martha E. Boesen, Assistant Attorney General, John P. Sarcone, County Attorney, and Gregory Brandt, Assistant County Attorney, for appellee.

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

OXBERGER, C.J.

In December 1990 Larry Lyons was charged, by trial information, with operating a motor vehicle while under the influence of alcohol as defined in Iowa Code section 321J.2. On January 22, 1991, Lyons signed a petition to plead guilty to operating while intoxicated, first offense. Lyons was sentenced the same day and given a ninety-day suspended sentence with probation. The court then ordered Lyons' license suspended according to chapter 321J. In the sentencing order, Lyons' license to operate a motor vehicle was revoked for six years pursuant to section 321J.4(3)(a). Lyons filed an appeal following this court's order permitting a delayed appeal. We review errors at law. Iowa R. App. 4.

Sufficiency of the Trial Court's Stated Reasons for Sentencing: We first consider whether the trial court erred in failing to state its reasons for imposing the sentence on the defendant. Iowa R. Crim. P. 22 (3)(d) provides in part:

In every case the court shall include in the judgment entry the number of the particular section of the Code under which the defendant is sentenced. The court shall state on the record its reason for selecting the particular sentence.

Defendant Lyons asserts that the court failed to give reasons for the sentence he received. The State argues that although the statement was succinct, the court did provide an explicit statement of reason for the sentencing. The judgment entry states:

The [c]ourt has determined that probation will provide reasonable protection to the public and maximum opportunity for rehabilitation of the defendant.

The State relies upon this statement as sufficient to comply with the requirements of Iowa R. Crim. P. 22(3)(d). A statement may be sufficient, even if terse and succinct, so long as the brevity of the court's statement does not prevent review of the exercise of the trial court's sentencing discretion. State v. Johnson, 445 N.W.2d 337, 343 (Iowa 1989). The trial court indicated its reason for sentencing was to provide public protection and maximum opportunity for the defendant's rehabilitation. The plain meaning of the words are clear and do not prevent review of the discretion exercised by the trial court. We find the statement sufficient.

Revocation of License: We next consider whether the trial court erred in ordering the defendant's drivers license revoked for six years. The trial court in its sentencing order noted the requirement to revoke Lyons' license under Iowa Code section 321J.4(3)(a). Lyons argues, and the State does not dispute that section 321J.4(3)(a) applies only upon a plea or verdict of guilty of a third or subsequent violation of section 321J.2.

The petition to plead guilty which the defendant signed indicates the charge was "OWI 1ST - SERIOUS MISD." Lyons asserts the revocation of his license was not subject to

the mandatory sentencing requirement because the charge was for a first offense.

First and foremost, it must be remembered that section 321J.4(3)(a) is a licensing revocation provision, not a sentencing provision. State v. Pettit, 360 N.W.2d 833, 835 (Iowa 1985); State v. Dumire, 443 N.W.2d 338, 338 (Iowa Ct. App. 1989). The legislative intent is that this section not be a sentencing statute which imposes a penalty; instead, it merely requires the court to perform the first step in the civil revocation of a driver's license. Dumire, 443, N.W.2d at 339. We have said that section 321J.4(3)(a) does not require a conviction of a third offense OWI. See State v. Socarras, 425 N.W.2d 426 (Iowa Ct. App. 1988). It merely requires three or more violations of section 321J.2. Id. at 428. Section 321J.4(3)(a) refers to violations rather than convictions. It does not matter whether the plea of guilty is to a first offense OWI or a second offense OWI; the proper focus must be on the number of violations. We therefore find Lyons' argument his license was not subject to mandatory sentencing requirements because the charge was a first offense, is without merit.

The State argues that during the combined plea and sentencing proceedings, the defendant acknowledged prior OWI offenses which do not appear elsewhere in the record. The State asserts that via the exchange between the

defendant and the court at this time, the defendant "implicitly admitted the existence of prior OWI convictions."

Iowa Code section 321J.4(3) provides:

Upon a plea 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 operating privilege for a period of six years. The court shall require the defendant to surrender to it all Iowa licenses or permits held by the defendant, which the court shall forward to the department with a copy of the order for revocation. (emphasis added).

It is clear, in the present case, Lyons pleaded guilty to an OWI first offense. We find the record however, is not clear regarding the prior violations. In the dialogue between the Lyons and the court, the following appears from the record:

Mr. Lyons: I want to plead no contest, but I can't deal here with this attorney I was assigned this morning.

The Court: What's that?

Mr. Lyons: In here -- I am a subcontractor, Your Honor. It states in here the court is going to take my drivers' license for six years. If it does, I have no income to pay any taxes or fines.

The Court: You understand that that's by the law. I have no control over that. That's the law, says if you've been convicted three or more times of OWI in your lifetime, then you have to have your license suspended for six years.

We cannot say this record is sufficient to establish the fact that Lyons had three or more violations. We therefore remand to the trial court for a determination of the number

of violations of 321.J.2. which exist. In the event Lyons has a third or subsequent violation of section 321.J.2., the court shall revoke Lyons' license pursuant to section 321J.4 (3)(a).

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.