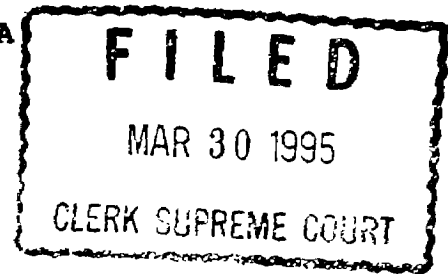


IN THE COURT OF APPEALS OF IOWA

No. 5-019 / 94-53



STATE OF IOWA,

Plaintiff-Appellee,

vs.

SHANNON EUGENE LARSON,

Defendant-Appellant.

Appeal from the Iowa District Court for Polk County,
Linda R. Reade, Judge.

The defendant appeals from the district court's ruling determining the defendant to be an habitual offender under Iowa Code section 321.555(1) and revoking his driver's license for a four-year period. **AFFIRMED.**

Alfredo Parrish and Robert P. Montgomery of Parrish, Kruidenier, Moss, Dunn, Montgomery & Thomas, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Robert P. Ewald, Assistant Attorney General, John P. Sarcone, County Attorney, and Michael O'Keefe, Assistant County Attorney, for appellee.

Heard by Hayden, P.J., and Cady and Huitink, JJ.

CADY, J.

Shannon Larson appeals from the district court's ruling determining him to be an habitual offender under Iowa Code section 321.555(1) (1993) and revoking his driver's license for four years. Following our review, we affirm.

The State petitioned for revocation of Larson's license under section 321.555(1)(c), which provides that anyone convicted of three or more offenses of driving while his or her license is under suspension within a six-year period shall be adjudicated an habitual offender. See State v. Iowa Dist. Court, 455 N.W.2d 918, 919 (Iowa 1990). At a hearing on the petition, the State presented an abstract of Larson's driving record to the court. The abstract indicated Larson had accumulated four convictions for driving under suspension or revocation from March 1991 to April 1992. This established the State's prima facie case. State v. Baudler, 349 N.W.2d 493, 496 (Iowa 1984).

Larson presented evidence that on October 11, 1991, before he was arrested on the last two offenses forming the basis for the habitual offender charge, the Iowa Department of Transportation issued him a new license after he paid back-fines. He, therefore, reasonably believed his license was no longer suspended. He claimed the offenses committed in November 1991 and April 1992 could not be used to establish an habitual offender adjudication.

The trial court rejected Larson's claims. It found the statute required an habitual offender adjudication based on

the abstract. The court went on to state that even if it had discretion, the sentence would not be changed. The district court subsequently entered an habitual offender determination and revoked Larson's license for a four-year period.

Larson appeals. He asserts Iowa Code section 321.558 (1993) grants the district court discretion to consider external evidence in determining whether he is an habitual offender. He claims the district court erred by failing to consider the external evidence that the state issued him a new license prior to commission of his third predicate offense. We review the district court's decision for correction of errors at law. Iowa R. App. P. 4.

We agree that evidence external to the record of convictions is relevant in making a determination of whether an individual is an habitual offender. Iowa Dist. Court, 455 N.W.2d at 920. Unless the defendant has an opportunity to offer evidence rebutting the state's prima facie case, the show cause hearing provided by section 321.558 is rendered useless. Id.

In this case, however, we need not reach the issue of whether the issuance of a license prior to Larson's third conviction on November 15, 1991, was sufficient cause not to find Larson an habitual offender. The trial court alternatively considered Larson's external evidence. Moreover, Larson committed a fourth offense on April 14, 1992 after he was informed his license was under

suspension. Larson admits that during the November 15 stop the officer informed him his license was suspended. The Department of Transportation records also indicate Larson was issued an habitual violator notice in late January 1992. Thus, even if the November 15, 1991 conviction is disregarded, Larson's record still shows three convictions creating a prima facie case that he is an habitual offender. Larson presented no explanation why he continued to drive from November 15, 1991, when he was informed his license was suspended, until December 3, 1993, when the district court entered its order.

Given Larson's record and the lack of mitigating evidence, we conclude the district court properly adjudicated Larson an habitual offender. Accordingly, we affirm the district court.

AFFIRMED.