

IN THE COURT OF APPEALS OF IOWA

No. 4-612 / 94-1148

FILED

FEB 28 1995

CLERK SUPREME COURT

STATE OF IOWA,

Appellee,

vs.

FELIX VAJGRT,

Appellant.

Appeal from the Iowa District Court for Tama County,
Lynne E. Brady, Judge.

Vajgrt challenges the district court's failure to allow him to withdraw his guilty plea to driving while license revoked. **AFFIRMED.**

Barry S. Kaplan of Fairall, Fairall, Kaplan, Hoglan, Condon & Klaessy, Marshalltown, for appellant.

Thomas J. Miller, Attorney General, Angela M. Smith, Assistant Attorney General, and Brent Heeren, County Attorney, for appellee.

Considered by Hayden, P.J., and Sackett and Huitink, JJ.

PER CURIAM

Felix Vajgert was charged with driving while license revoked in violation of Iowa Code section 321J.21 (1993). Vajgert's license had previously been revoked for driving while intoxicated.

On February 19, 1994, defendant entered into a plea agreement with the State. Defendant agreed to plead guilty to the charge of driving while license revoked, and in exchange the State agreed to dismiss a charge of speeding. Defendant signed a written guilty plea, and this was filed with the district court.

On March 7, 1994, defendant filed a motion to withdraw his guilty plea and a motion in arrest of judgment. In his motion he alleged he had not been fully advised as to the ramifications of his written plea of guilty.

At the hearing on the motions, defendant testified after he had signed the guilty plea his attorney told him the Iowa Department of Transportation would probably seek to revoke his driver's license for two years because this was the third time his license had been revoked. Defendant testified he needed to have a work permit because he lived in Cedar Rapids and worked in Marshalltown. Defendant admitted he was aware of the criminal consequences of his guilty plea.

The district court denied defendant's motion to withdraw guilty plea and motion in arrest of judgment. The court found defendant understood his rights and the

consequences of waiving those rights by pleading guilty, also the penalties which could be imposed on this type of charge. The court found the plea was made voluntarily and there was a factual basis for the charge and the plea of guilty.

At his sentencing in the criminal proceeding, defendant was ordered to pay a fine of \$350, plus a thirty-percent surcharge and costs. Defendant appealed.

Defendant contends the district court erred by not granting his motion to withdraw guilty plea and motion in arrest of judgment. He claims he was not advised of the full extent of punishment he could receive by pleading guilty. He believes he should be allowed to withdraw his guilty plea because he was not advised his driver's license could be revoked for a substantial period of time due to his guilty plea in this case.

It is discretionary with the trial court whether to grant or deny a withdrawal of a plea of guilty. State v. Ramirez, 400 N.W.2d 586, 588 (Iowa 1987). We will not find an abuse of discretion unless the defendant shows such discretion was exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable. Id.

We determine there is no abuse of discretion in the district court's denial of defendant's motions. The rule is well established defense counsel does not have a duty to inform a defendant about the collateral consequences of a guilty plea, but commits reversible error if counsel

misinforms the defendant as to these consequences. Stevens v. State, 513 N.W.2d 727, 728 (Iowa 1994).

We determine the administrative license revocation proceedings are a collateral proceeding to defendant's criminal action. The supreme court recognizes a clear separation between criminal proceedings involving operating-while-intoxicated prosecutions and administrative proceedings such as the revocation of a motor vehicle license. Iowa Dep't of Transp. v. Iowa Dist. Court, 504 N.W.2d 897, 898 (Iowa 1993).

Furthermore, we have stated:

We reiterate that an administrative revocation under section 321J.12 and a criminal prosecution under section 321J.2 are two separate and distinct proceedings. Acquittal of the criminal charge of operating a motor vehicle while intoxicated does not preclude a revocation of the motorist's privilege to drive.

Tripp v. Iowa Dep't of Transp., 474 N.W.2d 812, 815 (Iowa App. 1991) (citing Severson v. Sueppel, 260 Iowa 1169, 1176, 152 N.W.2d 281, 285 (1967)).

Thus, neither defense counsel nor the court had a duty to inform defendant about the administrative consequences of the guilty plea because the administrative proceedings are collateral and distinct proceedings. There is no abuse of discretion by the district court.

We affirm the decision of the district court denying defendant's motion to withdraw guilty plea and motion in arrest of judgment. We affirm defendant's conviction.

AFFIRMED.