IN THE COURT OF APPEALS OF IOWA

No. 8-419 / 97-1903

STATE OF IOWA,

Plaintiff-Appellee,

vs.

RANDY SCHULT,

Defendant-Appellant.

FILED
OCT 29 1998
CLERK SUPREME COURT

Appeal from the Iowa District Court for Bremer County, Peter B. Newel, District Associate Judge.

Randy Schult appeals from his conviction and sentence, following a guilty plea, to operating while intoxicated, third offense, in violation of Iowa Code section 321J.2(c) (1997). **AFFIRMED.**

Dennis A. Bjorklund, Iowa City, for appellant.

Thomas J. Miller, Attorney General, Robert P. Ewald, Assistant Attorney General, and Lawrence A. Stumme, Jr., County Attorney, for appellee.

Considered by Sackett, C.J., and Vogel and Mahan, JJ.

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MAHAN, J.

Defendant Randy Schult appeals from his conviction and sentence, following a guilty plea, to operating while intoxicated, third offense, in violation of Iowa Code section 321J.2(c) (1997). Defendant contends the district court erred in calculating this was his third offense under the provision in section 321J.2(3).[1] He also argues section 321J.2(3) is unconstitutionally vague and thus void. We affirm by memorandum opinion pursuant to Iowa Supreme Court rule 9.

Defendant pled guilty to operating while intoxicated (OWI), third offense. The district court sentenced defendant to an indeterminate five-year prison term and revoked his driving privileges for six years.

Defendant first contends the district court incorrectly interpreted Iowa Code section 321J.2(3) (1995) in convicting him of and sentencing him to a third offense. Under that section, before 1997 amendments, a court looked at the "six years prior to the date of the violation charged" to determine if the violation is a second, third, or subsequent offense. Defendant argues the court incorrectly counted the six years from the date of his first *conviction* to the date of his arrest for the third violation, when in fact the six years should run from the date of his *arrest* for the first violation. He argues the statute should be interpreted to provide for an "arrest to arrest" scheme

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[1] Section 321J.2(3) (**1995**) provides:

> 3. No conviction for, deferred judgment for, or plea of guilty to, a violation of this section which occurred more than six years prior to the date of the violation charged shall be considered in determining that the violation charged is a second, third, or subsequent offense. . . .

Iowa Code § 321J.2(3).

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as opposed to a "conviction to arrest" scheme. If the court had calculated the time in the way defendant proposes, it would have determined the current OWI violation was his second offense.

We review issues of statutory interpretation and application for errors at law. *State v. Eickelberg*, 574 N.W.2d 1, 3 (Iowa 1997); Iowa R. App. P. 4. We look to the object to be accomplished by the statute being interpreted and the evils sought to be remedied, adopting the interpretation that will best effectuate the legislative purpose. *State v. Daniel*, 574 N.W.2d 333, 336 (Iowa 1998). Our understanding of the six-year period in question is strongly guided by prior cases interpreting that period in related sections of Iowa Code chapters 321 and 321J.[2]

The Iowa Supreme Court discussed the six-year period for enhancing penalties for driving offenses at length. *State v. Raim*, 381 N.W.2d 635, 636-38 (Iowa 1986). Iowa adopts the "conviction to arrest" timetable for determining penalty enhancement. This approach treats *violators* of Iowa's driving laws equally. It also comports with the legislature's intent to remove intoxicated drivers from our streets. We decline to adopt the "arrest to arrest" scheme cited by defendant as used in six states. We conclude the district court correctly interpreted and applied Iowa Code section 321J.2(3)(1995) in sentencing defendant for OWI, third offense.

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[2] *See, e.g., State v. Eichen*, 487 N.W.2d 335 (Iowa 1992); *State v. Chesmore*, 474 N.W.2d 551 (Iowa 1991); *Shriver v. Iowa Dep't of Transp.*, 430 N.W.2d 921 (Iowa 1988); *State v. Raim*, 381 N.W.2d 635 (Iowa 1986); *State v. Socarras*, 425 N.W.2d 426 (Iowa App. 1988).

Defendant also argues that because of the varied interpretations and inconsistent application arising under the statute, it is unconstitutionally void for vagueness violating the equal protection and substantive due process clauses of the Iowa and United States Constitutions. We determine defendant did not preserve error on this issue. Even errors of constitutional import must be preserved for review. *State v. Webb*, 516 N.W.2d 824, 828 (Iowa 1994). We do not address issues raised for the first time on appeal, even constitutional questions. *State v. Kinkead*, 570 N.W.2d 97, 102 (Iowa 1997); *State v. Halliburton*, 539 N.W.2d 339, 343 (Iowa 1995).

AFFIRMED.