

IN THE COURT OF APPEALS OF IOWA

No. 4-498 / 93-1665

FILED

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CLERK SUPREME COURT

STATE OF IOWA, ex rel., FAYETTE
COUNTY ATTORNEY, W. WAYNE SAUR,

Plaintiff-Appellee,

vs.

JAMES JOSEPH LEEHEY,

Defendant-Appellant.

Appeal from the Iowa District Court for Fayette County,
K.D. Briner, Judge.

The defendant appeals from the habitual offender adjudication under Iowa Code 321.555 barring him from operating a motor vehicle for two years. **AFFIRMED.**

Robert J. Hearity of Hearity Law Firm, Waterloo, for appellant.

Bonnie J. Campbell, Attorney General, David A. Ferree, Special Assistant Attorney General, Mark Hunacek, Assistant Attorney General, and W. Wayne Saur, County Attorney, for appellee.

Heard by Donielson, C.J., and Sackett and Cady, JJ.

PER CURIAM

Defendant-appellant James Joseph Leehey was ordered barred from operating a motor vehicle under Iowa Code sections 321.55, 321.559, and 321.560 for two years. Leehey contends the trial court incorrectly found, under the circumstances of this case, it was without discretion to grant his requests. We affirm.

We review for correction of errors at law. Iowa R. App. P. 4. Certain facts are not in dispute. Leehey's license to drive in Iowa was suspended as a result of an accident in Missouri. In the period from April 25, 1992, through May 28, 1992, he was stopped in Iowa three times and charged with driving while his Iowa license was revoked or suspended. Leehey pled guilty to all three violations. The county attorney then filed a petition stating he was directed by the Code of Iowa¹ to file the petition and asking the court to determine whether Leehey is a habitual offender² and directing Leehey appear and show cause why he

1. Iowa Code section 321.556 provides:

The director of transportation shall certify three abstracts of the conviction record as maintained in the department of transportation of any person who appears to be an habitual offender, to the county attorney of the county in which such person resides, The county attorney . . . upon receiving the abstract from the director, shall file a petition against the person named therein in the district court of the state of Iowa in the county where such person resides The petition shall request the court to determine whether or not the person named therein is an habitual offender.

2. Iowa Code section 321.55 Habitual offender defined, provides, in relevant part:

As used in this division, "habitual offender" means any person who has accumulated convictions for separate and

should not be barred from operating a motor vehicle on the highways of the state for not less than two nor more than six years.

A hearing was held. The three violations were admitted. Leehey testified his license was revoked because a judgment was entered against him in Missouri where someone else was using a small two-wheeled trailer registered in his name but not covered by his insurance policy because it, at the time of the accident, was not being pulled by his power unit. The accident occurred on July 12, 1989. His license apparently was suspended on June 3, 1992, because of a judgment entered from the Missouri accident. Leehey entered, subject to objection as to relevancy, an installment agreement signed on December 23, 1991, on a form of the Missouri Drivers License Bureau agreeing to pay, as well as a letter he received on January 13, 1992, from the state of Missouri, Drivers License Bureau, indicating they received the court-approved installment agreement but, before reinstatement, they needed proof of financial responsibility and \$20.

distinct offenses described in subsection 1, 2, or 3, committed after July 1, 1974, for which final convictions have been rendered, as follows:

1. Three or more of the following offenses, either singularly or in combination, within a six-year period.

c. Driving a motor vehicle while the person's motor vehicle license is suspended or revoked. Iowa Code § 321.555(1)(c) (1991).

Leehey testified he had the insurance and paid the \$20 fee. He further testified he went to Des Moines to get things taken care of and was told Missouri is slow with paperwork. At the time of hearing, Leehey had a work permit for the state of Iowa.

Leehey further testified, at the time of the accident in Missouri, the person driving at the time told Leehey it would be taken care of; when Leehey was sued, he took it to the driver and it was ultimately determined he owed half.

Leehey testified he made a living by driving a truck and farming and he is responsible for the care of his wife who has had both knees replaced and cannot drive in the winter. Leehey said his mother lives with them and he had a stepson who had a kidney transplant two years earlier. Leehey testified, without a license, he will not be able to work as a trucker.

After the hearing, the trial court made findings that Leehey presented the following mitigating circumstances:

A. The license revocation underlying these proceedings was incurred because of an accident caused by another person while he was operating equipment belonging to [Leehey] in the State of Missouri.

B. When [Leehey] learned of the unpaid judgment in Missouri, he paid his share of the judgment and received an order from the Missouri authority rescinding the suspension.

C. When [Leehey] learned of the Iowa suspension which followed, he called the Department of Transportation and was advised that the department would rescind his Iowa revocation when records were received from Missouri.

D. [Leehey] obtains 70 percent of his income from trucking and believes that he will lose his

farm if his license is revoked in these proceedings.

E. [Leehey]'s wife has had both knees replaced and depends upon [him] for transportation.

F. By way of fines and a jail sentence for contempt on an unrelated probation, [Leehey] has already been severely punished for these infractions.

The court also found, at the time of his first arrest, Leehey learned his license had been revoked.

The court then went on to find, while it had sympathy for Leehey's position, the sympathy did not empower it to grant Leehey's requests for either not revoking the license or to qualify him for a restricted license to allow him to do his work.

The question is, did the trial court correctly find it had no discretion.

To answer this question, we focus on the court's language in State v. Iowa District Court, 455 N.W.2d 918 (Iowa 1990). In Iowa District Court, the court found the driver's defense and the trial court's decision premised on evidence driving was his sole means of support and the license was suspended because of a mistaken good-faith belief someone else would pay a fine. Id. at 920. While such evidence should be taken into consideration to run to the number of years of suspension, it was not sufficient to show cause why the driver should not be found to be a habitual offender. See id.

And then the court went on to say:

[w]e do not believe that the legislature intended the show cause hearing provided by section 321.558

to be a mere pro forma exercise. Consequently, we find that evidence external to the record of convictions is relevant in making a determination of whether an individual is a habitual offender. (Emphasis supplied). Id.

External is defined as "apparent, outward, visible from the outside, patent, exterior, capable of being perceived." Black's Law Dictionary 524 (5th ed. 1979). Leehey contends this language gives the court discretion to consider the evidence introduced relevant to the Missouri suspension being taken care of even though the paperwork was not completed in determining whether he is a habitual offender.

The State advances the trial court found Leehey a "habitual offender" within the meaning of Iowa Code section 321.555(1)(c) and, therefore, the court was correct in determining it had no discretion but to bar Leehey from driving for a period of at least two years. The State goes on to argue, when a person has been found to be a habitual offender, the statute provides the court "shall by appropriate judgment direct that such person not operate a motor vehicle on the highways of this state for the period specified in section 321.560" and Iowa Code section 321.560 provides, "license to operate a motor vehicle in this state shall not be issued to any person declared to be an habitual offender under section 321.555, subsection 1 for a period of not less than two years . . ."

We believe the language of Iowa District Court, does not allow the court to consider the evidence that at the

time Leehey was charged and pled guilty to suspension, his license was only under suspension because Missouri had not properly terminated the suspension.

Leehey also contends the fact loss of his license would cause a hardship can be considered in determining whether he is a habitual offender. We disagree. The court in Iowa District Court clearly rejected this argument. Id. at 920.

AFFIRMED.

Donielson, C.J., and Cady, J., concur; Sackett, J., dissents in part.

8-10-54
SACKETT, J. (dissenting in part)

I dissent in part.

I determine the district court incorrectly determined it could not consider the evidence that Leehey's license was only under suspension because Missouri had not properly terminated the suspension. I would remand to the district court to consider this very limited evidence. This distinguishes this case from Iowa District Court where the driver thought the fines were paid but they were not.