IN THE COURT OF APPEALS OF IOWA

No. 1999-328 (9-581) / 98-1440
Filed January 12, 2000

STATE OF IOWA,

Appellee,

FILED
JAN 1 2 2000
CLERK SUPREME COURT

vs.

LARRY EUGENE WISEMAN,

Appellant.

Appeal from the Iowa District Court for Washington County, Lucy J. Gamon, District Associate Judge.

A jury convicted Larry Wiseman of operating a motor vehicle while intoxicated (second offense). On appeal, he contends his prior offense should not have been considered because he entered his guilty plea more than six years earlier.

AFFIRMED.

Thomas M. Walter and Kenneth A. Duker of Johnson, Hester, Walter & Breckenridge, L.L.P., Ottumwa, for appellant.

Thomas J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney General, and Barbara A. Edmondson, County Attorney, for appellee.

Considered by Streit, P.J., and Vogel, and Vaitheswaran, JJ.

VAITHESWARAN, J.

A jury convicted Larry Wiseman of operating a motor vehicle while intoxicated (OWI) second offense. On appeal, he contends his prior offense should not have been considered because he entered his guilty plea more than six years earlier. We affirm.

I. Background Facts and Proceedings

On January 25, 1997, officers arrested Wiseman for driving while intoxicated. The State charged him with OWI in violation of Iowa Code section 321J.2. Wiseman pled not guilty and waived his right to a speedy trial. Iowa R. Crim. P. 27(2)(b).

On August 1, 1997, the State filed a second trial information, charging Wiseman with second offense OWI, based on the January 25, 1997 incident. The charge was based on a February 8, 1991 conviction of second offense OWI. Wiseman again pled not guilty and waived his right to a speedy trial. A jury convicted Wiseman and the district court sentenced him to a jail term, fine, and probation. This appeal followed.

II. Statutory Enhancement

Our review is for errors of law. *State v. McSorley*, 549 N.W.2d 807, 809 (Iowa 1996). Following trial, Wiseman stipulated to the existence of a prior conviction, but contended he entered his guilty plea more than six years before the current offense. He claimed the conviction on the prior plea, therefore could not be used to enhance his punishment in the present case. The district court disagreed, concluding "it is the date of the defendant's prior conviction in this case which is

relevant in determining whether the current offense is a second, third or subsequent offense, and not the date of the prior guilty plea." We agree with the district court.

Iowa Code chapter 321J (1997)[1] governs OWI actions and provides for a "scheme of escalating punishments based on the number of defendant's prior 'offenses.'" *State v. Ridout*, 346 N.W.2d 837, 839 (Iowa 1984). Section 321J.2(3) states in pertinent part:

> 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. For the purpose of determining if a violation charged is a second, third, or subsequent offense, deferred judgments pursuant to section 907.3 for violations of this section and convictions or the equivalent of deferred judgments for violations in any other states under statutes substantially corresponding to this section shall be counted as previous offenses. . . Each previous violation on which conviction or deferral of judgment was entered prior to the date of the violation charged shall be considered and counted as a separate previous offense.

We strictly construe penal statutes and resolve doubts in favor of the accused. *State v. Allison*, 576 N.W.2d 371, 373 (Iowa 1998). When the meaning of a statute is clear, we will look no further than its express terms. *Id.* When ambiguities exist, we will give effect to legislative intent by resorting to established principles of statutory construction. *See State v. Sailer*, 587 N.W.2d 756, 759 (Iowa 1998).

A statute is ambiguous if reasonable minds could differ about its meaning. *Holiday Inns Franchising, Inc. v. Branstad*, 537 N.W.2d 724, 728 (Iowa 1995). Even

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[1] This provision was amended during the 1997 legislative session. *See* 1998 Iowa Acts ch. 1138, § 34. All references in this opinion are to the pre-amendment statute.

where words have an ordinary meaning, "we will search for an alternative meaning if adherence to the strict letter of the law would lead to an unreasonable, unjust, impracticable, or absurd outcome or where a literal reading would cause provisions to contradict." *Id.* We will not construe a statute to make any part of it superfluous unless no other construction is reasonably possible. *Civil Servs. Comm'n v. Iowa Civil Rights Comm'n*, 522 N.W.2d 82, 86 (Iowa 1994).

We must determine whether the statutory enhancement period begins to run on the date a defendant enters a guilty plea or on the date of conviction. The answer is not evident from a plain reading of Iowa Code section 321J.2(3). The State reads the provision to mean the date of conviction controls for purposes of calculating the enhancement period. Wiseman counters that the term "guilty plea" in the first sentence of section 321J.2(3) would be superfluous if the section were construed as the State wishes. We agree with Wiseman that the State's reading of Iowa Code section 321J.2(3) renders the term "guilty plea" meaningless. However, we conclude a reasonable construction of the entire provision requires us to ignore the term.

Although a guilty plea may be equated with a conviction, a plea does not finally adjudicate the rights of the defendant. *Compare State v. White*, 587 N.W.2d 240, 242 (Iowa 1998) (*quoting Boykin v. Alabama*, 395 U.S. 238, 242-43, 89 S. Ct. 1709, 1712, 23 L. Ed. 2d. 274, 279 (1969)) *with* Iowa R. Crim. P. 8. A guilty plea may be withdrawn "at any time before judgment." Iowa R. Crim. P. 8(2)(a). A guilty plea also may be rejected, if a court is not satisfied there has been a knowing and intelligent waiver of constitutional rights. *See* Iowa R. Crim. P. 8(2)(b); *White*, 587

N.W.2d at 242-43. Because a guilty plea may be withdrawn or rejected, it is not reasonable to permit enhancement of punishment on the basis of a plea alone.

The Iowa Supreme Court's holding in *State v. Raim*, 381 N.W.2d 635, 637 (Iowa 1986), lends support to this conclusion. The issue the court faced was whether the statutory enhancement period began to run from the date of the prior violation or from the date of conviction. The court held the enhancement period runs from the date of conviction. The court reasoned:

> A defendant is protected with a presumption of innocence before conviction, and it is consistent with this presumption to conclude that a charge of an OWI violation alone cannot be used to enhance any punishment. The prior offenses referred to in [the predecessor statute] which shall increase the penalty mean "offenses that have been legally ascertained and determined-synonymous with convictions or judgments obtained in prior actions against the defendant for violation of the said statute."

Id. at 637; *see also State v. Clark*, 351 N.W.2d 532, 537 (Iowa 1984) (noting "offense" is synonymous with "conviction"). Although *Raim* addressed a prior violation rather than a prior guilty plea, we find the court's reasoning persuasive.

A defendant who pleads guilty relinquishes the presumption of innocence. *State v. Anderson*, 338 N.W.2d 372, 376 (Iowa 1983). Therefore, it is not reasonable to consider a guilty plea as a basis for enhancement until the defendant has an opportunity to fully consider the implications of the plea and the court ensures the presumption of innocence is knowingly and voluntarily relinquished. This occurs only after compliance with rule 8. Accordingly, we hold the statutory enhancement period set forth in Iowa Code section 321J.2(3) begins to run from the date of

conviction, rather than from the date of the guilty plea itself. As the conviction on the plea was entered within six years of the current violation charged, we conclude Wiseman's prior conviction may serve as the basis for statutory enhancement.

III. Ineffective Assistance of Counsel

Wiseman contends his trial attorney was ineffective in failing to argue his speedy indictment and speedy trial rights were violated. We review ineffective assistance of counsel claims de novo. *State v. Query*, 594 N.W.2d 438, 444 (Iowa App. 1999). When such claims are raised on direct appeal, we generally preserve them for postconviction proceedings, to allow full development of the facts surrounding counsel's conduct. *Id.* The record here does not warrant deviation from this general practice. Accordingly, we preserve Wiseman's claim for postconviction proceedings.

The conviction and sentence are affirmed.

AFFIRMED.