IN THE COURT OF APPEALS OF IOWA

No. 1-676 / 01-0006
Filed December 28, 2001

LYMAN STEVE FILE,
Petitioner-Appellee,

vs.

IOWA DEPARTMENT OF TRANSPORTATION, MOTOR VEHICLE DIVISION,
Respondent-Appellant.

FILED
DEC 28 2001
CLERK SUPREME COURT

Appeal from the Iowa District Court for Pottawattamie County, James S. Heckerman, Judge.

The Iowa Department of Transportation appeals from the district court's ruling on judicial review reversing the revocation of Lyman File's driver's license. **AFFIRMED.**

Thomas J. Miller, Attorney General, David A. Ferree, Special Assistant Attorney General, and Mark Hunacek, Assistant Attorney General, for appellant.

Joseph J. Hrvol of Joseph J. Hrvol, P.C., Council Bluffs, for appellee.

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

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MAHAN, J.

The Iowa Department of Transportation appeals from a decision of the district court that reversed the revocation of petitioner's driver's license under Iowa Code section 321.209(7) (1999). The department claims a deferred judgment constitutes a conviction for purposes of license revocation. It also claims the district court overturned the revocation on improper grounds. We affirm.

Lyman File was charged with eluding a police officer in violation of section 321.279. He pled guilty and received a deferred judgment. On December 2, 1999, he received notice from the department his driver's license was revoked for one year under section 321.209(7). File sought judicial review of the revocation. The district court determined:

> The Petitioner received a deferred judgment on the Eluding charge. The Respondent relies upon Chapter 321.209, which requires a conviction. The Petitioner was not convicted, nor did his conviction become final, as contemplated under the statute. The authorities cited by the Respondent are not persuasive on this issue.

The court reversed the revocation of File's license. The department appealed.

We addressed the issue of whether the term "conviction," as used in section 321.209, includes a deferred judgment in another case filed on this date.[1] Section 321.209 includes the phrase, "when such conviction has become final." Based on the specific language of section 321.209, we found the legislature intended a driver's license to be revoked only when a conviction becomes final.

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[1] *State v. Schilling*, No. 99-1781 (Iowa Ct. App. Dec. 28, 2001).

A deferred judgment is not a final judgment. *State v. Anderson*, 246 N.W.2d 277, 279 (Iowa 1976). File's deferred judgment for eluding is not a final conviction, and the department does not have authority to revoke his license under section 321.209.

Based on our decision on this issue, we do not address the department's arguments concerning submission of the administrative record.

We affirm the decision of the district court.

AFFIRMED.

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