IN THE COURT OF APPEALS OF IOWA

No. 6-646 / 96-0080

STATE OF IOWA,

Plaintiff-Appellee,

vs.

NIELS RANDY SCHMIDT,

Defendant-Appellant.

FILED
NOV 27 1996
CLERK SUPREME COURT

Appeal from the Iowa District Court for Tama County, Michael J. Newmeister, District Associate Judge.

Niels Schmidt appeals from judgment and sentence entered following a jury trial for driving under revocation. **AFFIRMED.**

James T. Peters, Independence, for appellant.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant Attorney General, and Brent D. Heeren, County Attorney, for appellee.

Considered by Sackett, C.J., and Cady and Streit, JJ.

PER CURIAM

This is an appeal by a defendant challenging his conviction for driving while license revoked, in violation of Iowa Code section 321J.21. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9. This is a companion case to *State v. Schmidt*, No. 95-2084 (Iowa App. Nov. 27, 1996).

Niels Schmidt was previously convicted of driving while intoxicated, and he received a deferred judgment in that case. Due to a procedural error, the Department of Transportation (DOT) did not administratively revoke his driver's license. However, on December 16, 1994, the district court issued an order that Schmidt's license should be revoked for 180 days.

As of February 9, 1995, Schmidt's license was revoked. On February 18, 1995, police officers were alerted that Schmidt's van had became stuck on a fire hydrant. Schmidt admitted he had been driving the van. He was subsequently arrested for driving while license revoked.

Schmidt represented himself at his criminal trial. He presented evidence to show that under section 321J.4(2), when a court defers judgment in an OWI case, the defendant's driver's license may be revoked for a period of not less than thirty days nor more than ninety days. He argued his revocation for 180 days was improper. A jury found him guilty of driving while license revoked.

Schmidt now appeals. He claims the district court did not have authority to revoke his license for 180 days and, therefore, his present conviction should be

overturned. He believes the revocation for 180 days is actually an illegal sentence because it is not authorized by statute. He contends he cannot be convicted of driving while license revoked where the underlying revocation is illegal.

There is no evidence in this case to show Schmidt appealed the revocation or challenged it in a post-conviction action. A revocation which has not been the subject of a successful collateral attack should be considered valid. *State v. Grogan*, 385 N.W.2d 254, 255 (Iowa 1986). In order to prove the offense of driving while license revoked, the State must show (1) defendant's license had been revoked, and (2) defendant had operated a motor vehicle while his license was thus revoked. *State v. Thompson*, 357 N.W.2d 591, 594 (Iowa 1984). The State is not required to retry the elements of the original revocation. *Id.*

The present case is not the proper forum for Schmidt to challenge the legality of the underlying revocation of his driver's license. We affirm his conviction for driving while license revoked. Costs of this appeal are assessed to Schmidt.

AFFIRMED.