IN THE COURT OF APPEALS OF IOWA

No. 6-624 / 95-2094

STATE OF IOWA,

Plaintiff-Appellee,

vs.

JAMES M. ROBERTS,

Defendant-Appellant.

FILED
NOV 27 1996
CLERK SUPREME COURT

Appeal from the Iowa District Court for Johnson County, Sylvia A. Lewis and Michael J. Newmeister, District Associate Judges.

Defendant appeals the sentence imposed by the district court on his conviction for operating a motor vehicle while intoxicated. **AFFIRMED.**

Jerald W. Kinnamon of Kinnamon, Kinnamon, Russo & Meyer, Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney General, J. Patrick White, County Attorney, and Teresa A. Vens, Assistant County Attorney, for appellee.

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

PER CURIAM

This is an appeal by a defendant claiming the district court improperly revoked his driver's license for six years as part of his sentence for operating while intoxicated (OWI) in violation of Iowa Code section 321J.2 (1993). We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

In 1982, James Roberts received a deferred judgment on an OWI offense under section 321.281 (1981) (now section 321J.2). He was also convicted of an OWI offense under section 321J.2 in 1987. On February 8, 1995, he was again charged with OWI.

Roberts filed an application for separate adjudication of law points on the issue of whether his 1982 deferred judgment could be used as one of the three violations required to bar his license for a six-year period under section 321J.4(3)(a). The district court determined the deferred judgment would be considered a violation for purposes of section 321J.4(3)(a).

The case proceeded to a bench trial on stipulated evidence. Roberts was convicted of OWI. The court ordered the Department of Transportation (DOT) to revoke his motor vehicle license for a period of six years.

Roberts now appeals. He claims the district court erred in concluding the 1982 deferred judgment should be considered a violation for purposes of applying section 321J.4(3)(a). He claims that under the law in effect in 1982, a deferred judgment

would be expunged. He also claims section 321J.4(3)(a) is punitive in nature and should not be applied retroactively.

The supreme court has held that a deferred judgment should be considered a violation for purposes of applying section 321J.4(3)(a). *State v. Blood*, 360 N.W.2d 820, 822 (Iowa 1985). This section is a license revocation provision, not a sentencing provision. *State v. Pettit*, 360 N.W.2d 833, 835 (Iowa 1985). Revocation under section 321J.4(3)(a) is not intended as a punishment to the driver, but was intended to protect the public by providing that drivers who have demonstrated a pattern of driving while intoxicated be removed from the highways. *Blood*, 360 N.W.2d at 822.

If a driver has three or more OWI violations, a court must order the imposition of the six-year driving bar as required by section 321J.4(3)(a). *State v. Socarras*, 425 N.W.2d 426, 427 (Iowa App. 1988). The date of the violations is irrelevant. *Id.* We conclude Roberts' 1982 deferred judgment was properly considered, and find no error in the court's order to the DOT requiring the revocation of his driver's license for a period of six years.

We affirm Roberts' conviction and sentence for OWI. Costs of this appeal are assessed to Roberts.

AFFIRMED.