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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-116**

Nathan David Cuperus, petitioner,  
Appellant,

vs.

Commissioner of Public Safety,  
Respondent.

**Filed August 15, 2011  
Affirmed  
Willis, Judge\***

Becker County District Court  
File No. 03-CV-10-2086

Nathan David Cuperus, Corpus Christi, Texas (pro se appellant)

Lori A. Swanson, Attorney General, Emerald Gratz, Assistant Attorney General, St. Paul,  
Minnesota (for respondent)

Considered and decided by Wright, Presiding Judge; Schellhas, Judge; and Willis,  
Judge.

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\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to  
Minn. Const. art. VI, § 10.

## UNPUBLISHED OPINION

**WILLIS**, Judge

Appellant challenges on due-process grounds the district court's dismissal of his petition for review of his license revocation following an arrest for driving while impaired (DWI). Because appellant's petition for review was untimely and his due-process rights were not violated, we affirm.

### FACTS

On June 3, 2010, appellant Nathan David Cuperus was stopped by a law-enforcement officer in Lake Park for suspected DWI. Cuperus told the officer that the address on his driver's license was not current, and he provided what he claimed to be his then-current address. Cuperus submitted to a blood test that showed that his alcohol concentration was 0.08 or more. He was arrested. On June 16, the state mailed Cuperus a notice of revocation of his license to the address appearing on his North Dakota driver's license. The notice was not returned to the state by postal authorities as undeliverable or for any other reason. Under Minnesota law, Cuperus had 30 days after receipt of the notice to file a petition for judicial review. *See* Minn. Stat. 169A.53, subd. 2(a) (2010).

Cuperus filed a petition for judicial review on September 2. The state moved to dismiss the petition as untimely. Following a hearing, the district court issued an order finding that Cuperus was deemed to have received the notice and order of revocation on June 19; the 30-day deadline for petitioning for judicial review was July 19; and Cuperus did not file his petition for review with the court until September 2, which was 45 days after the deadline. The district court concluded that "[t]imely filing of the Petition for

Judicial Review is jurisdictional, and the Court lacks jurisdiction to hear the matter where the petition was not timely filed, even if the delay is not the fault of the driver.”

This appeal follows.

## D E C I S I O N

### **I. The district court did not err by dismissing Cuperus’s petition.**

The district court dismissed Cuperus’s petition on the ground that it was not timely filed. An individual may obtain judicial review of the revocation of his driver’s license under the implied-consent law. Minn. Stat. § 169A.53, subd. 2 (2010). The petition for review must be filed within 30 days after receipt of the notice of revocation. *Id.*, subd. 2(a). If a notice of revocation is mailed, the notice of revocation is deemed to have been received three days after mailing. Minn. Stat. § 169A.52, subd. 6 (2010). Timely filing of a petition for review is “jurisdictional in nature,” and the district court will not hear the matter when the petition was not timely, even if the delay is not the fault of the driver. *See McShane v. Comm’r of Pub. Safety*, 377 N.W.2d 479, 481 (Minn. App. 1985), *review denied* (Minn. Jan. 23, 1986).

It is undisputed that the state mailed Cuperus a notice of revocation on June 16. Therefore, under the statute, Cuperus was deemed to have received it on June 19. And Cuperus did not file his petition for judicial review until 75 days later, on September 2. Therefore, the district court did not err by dismissing the petition.

## **II. The district court's dismissal of his petition did not deny Cuperus due process of law.**

Cuperus argues that the dismissal of his petition denied him due process of law. “This court reviews de novo the procedural due process afforded a party.” *Zellman ex rel. M.Z. v. Indep. Sch. Dist. No. 2758*, 594 N.W.2d 216, 220 (Minn. App. 1999), *review denied* (Minn. July 28, 1999). State action affecting an interest in life, liberty, or property requires the state to provide the burdened party with notice and an opportunity to be heard. *See Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 795 103 S. Ct. 2706, 2709 (1983). Notice must be “reasonably calculated” to inform the party of his opportunity to be heard. *McShane*, 377 N.W.2d at 483. And a driver’s license is a protectable property interest subject to due-process protection. *Lamusga v. Comm’r of Pub. Safety*, 536 N.W.2d 54, 644, 646 (Minn. App. 1995), *review denied* (Minn. Oct. 27, 1995).

Cuperus argues that the law-enforcement officer should have been required to “make a reasonable effort to determine [his] actual address before [certifying] the address on the . . . driver’s license as the . . . actual address.” Cuperus argues that because he told the officer that the address on his license was incorrect, the notice that was mailed to him at that address was not “reasonably calculated” to give him notice and an opportunity to be heard. But Minnesota law provides otherwise. “Notice of revocation [or] suspension . . . is sufficient if personally served, or if mailed by first class mail to the person’s last known address or to the address listed on the person’s driver’s license.” Minn. Stat.

§ 171.24, subd. 7 (2010). And “[a]ctual receipt of the notice is not required to meet the due process requirement.” *State v. Green*, 351 N.W.2d 42, 44 (Minn. App. 1984).

Here, the only documented address that the police officer had was the address on Cuperus’s driver’s license. Because Minnesota law treats mailing to the address shown on the driver’s license as sufficient notice of revocation, Cuperus’s due-process arguments are without merit. It was Cuperus’s responsibility, not the state’s, to make certain that the address on his driver’s license was current.

**Affirmed.**