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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1370**

State of Minnesota,
Respondent,

vs.

Brian Scott Patrick,
Appellant.

**Filed September 2, 2008
Affirmed
Stoneburner, Judge**

Hennepin County District Court
File No. 06060176

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul,
MN 55101-2134; and

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Considered and decided by Toussaint, Chief Judge; Shumaker, Judge; and
Stoneburner, Judge.

UNPUBLISHED OPINION

STONEBURNER, Judge

Appellant challenges use of a June 23, 2000 license revocation to enhance a August 12, 2006 DWI charge, arguing that his Minnesota Constitutional rights were violated in the revocation proceeding. We affirm.

FACTS

Appellant Brian Scott Patrick was arrested for driving while impaired (DWI) on August 12, 2006. The state charged him with two counts of felony first-degree DWI based on three qualified prior alcohol-related incidents: a September 26, 2003 DWI conviction, a September 7, 2000 DWI conviction, and a June 23, 2000 license revocation (the revocation).

Patrick moved to dismiss or amend the charges, challenging the use of the June 23 license revocation based on his assertion that he was not given any notice of the revocation¹ and, alternatively, that he did not have the opportunity to consult with an attorney before deciding whether to submit to testing. The district court denied the motion and Patrick agreed to submit the DWI charge to the district court for a trial on stipulated facts. The district court found Patrick guilty of first-degree DWI in violation of Minn. Stat. § 169A.20, subd. 1(5) (2006) and sentenced him to 48 months in prison, stayed for five years with conditions, including 180 days in jail. This appeal followed.

¹ Patrick asserted that he was not the person involved in the incident that led to the revocation but nothing in the record supports this assertion.

DECISION

A person who drives while impaired commits first-degree DWI if the person “commits the violation within ten years of the first of three or more qualified prior impaired driving incidents.” Minn. Stat. § 169A.24, subd. 1(1) (2006). The revocation in this case, based on refusal to test, qualifies as a prior impaired-driving incident. Minn. Stat. § 169A.03, subd. 22 (2006) (defining qualified prior impaired-driving incidents to include prior convictions listed in Minn. Stat. § 169A.03, subd. 20 (2006) and prior impaired driving-related loss of license listed in Minn. Stat. § 169A.03, subd. 21 (2006)). Whether the revocation is a valid, qualified prior impaired-driving incident for purposes of DWI enhancement is a question of law reviewed de novo. *State v. Bergh*, 679 N.W.2d 734, 737 (Minn. App. 2004), *abrogated on other grounds by State v. Schmidt*, 712 N.W.2d 530 (Minn. 2006).

Patrick acknowledges that, under existing caselaw, he cannot challenge the validity of the revocation because he did not seek timely review of the revocation.² *See State v. McLellan*, 655 N.W.2d 669, 671 (Minn. App. 2003) (holding that because defendant did not timely challenge impaired-driving-related revocation of driver’s license, revocation was valid and enhancement of subsequent DWI based on revocation was proper). Instead, Patrick argues that he is only challenging the state’s ability to *use* the June 2000 revocation for enhancement purposes under this court’s holdings in *State v.*

² A person whose license is revoked may request administrative review of the revocation “[a]t any time during a period of revocation,” or may petition for judicial review “[w]ithin 30 days following receipt of a notice and order of revocation.” Minn. Stat. § 169A.53, subs. 1(a), 2(a) (2006).

Mellet, 642 N.W.2d 779 (Minn. App. 2002), *review denied* (Minn. July 16, 2002), and *Davis v. Comm'r of Pub. Safety*, 509 N.W.2d 380, 392 (Minn. App. 1993), *aff'd*, 517 N.W.2d 901 (Minn. 1994). But neither of these cases limits the use of a valid impaired-driving-related revocation to enhance a subsequent DWI. Use of the valid revocation to enhance the current charge was proper.

Affirmed.