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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0067**

Dean Jon Rich, petitioner,
Respondent,

vs.

Commissioner of Public Safety,
Appellant.

**Filed August 20, 2012
Reversed
Halbrooks, Judge**

Dakota County District Court
File No. 19HA-CV-11-3633

Daniel J. Koewler, Charles A. Ramsay, Ramsay Law Firm, P.L.L.C., Roseville, Minnesota (for respondent)

Lori Swanson, Attorney General, Natasha Karn, Assistant Attorney General, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Bjorkman, Judge; and Muehlberg, Judge.*

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant Minnesota Commissioner of Public Safety challenges the rescission of the revocation of respondent Dean Rich's driver's license under Minn. Stat. § 169A.52

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

(2010), of the implied-consent law, based on an alleged due-process violation. Because the implied-consent law does not require the commissioner to provide an individual with seven days' notice of license revocation and because Rich's due-process rights were not violated by the four-day notice he received, we reverse.

FACTS

Rich was arrested for driving while impaired (DWI) on February 27, 2011. Following his arrest, Rich provided a urine sample, which revealed an alcohol concentration greater than .08. On May 23, 2011, the commissioner sent Rich a driver's-license-revocation notice. The notice advised Rich that his license was revoked effective May 30. Rich challenged the revocation, and the district court rescinded it, ruling that "[Rich]'s Due Process rights were violated as a result of his receiving only a four-day notice, which violated the notice requirement of the statute. . . . [T]he Minnesota Supreme Court has deemed the seven-day notice requirement as hardship relief that protects a person's private interest and due process rights." This appeal follows.

DECISION

I.

The commissioner argues that the district court erred in its interpretation of the implied-consent law because the law does not contain a seven-day notice requirement before the commissioner can revoke a person's driver's license. This court reviews statutory interpretation de novo. *Nelson v. Comm'r of Pub. Safety*, 779 N.W.2d 571, 575 (Minn. App. 2010). The commissioner is required to revoke a person's license when three conditions are met: (1) the peace officer certifies that there was probable cause to

believe the person was guilty of a DWI; (2) the person submitted to a test; and (3) the certified test results indicate an alcohol concentration of 0.08 or more. Minn. Stat. § 169A.52, subd. 4(a) (2010). Neither party argues that these three conditions were not satisfied in this case.

Subdivision 6 of this section addresses the requirements of the notice that must be provided to a person upon revocation of his or her license:

A revocation under this section . . . becomes effective at the time the commissioner . . . notifies the person of the intention to revoke, disqualify, or both, and of revocation or disqualification. The notice must advise the person of the right to obtain administrative and judicial review If mailed, the notice and order of revocation or disqualification is deemed received three days after mailing to the last known address of the person.

Minn. Stat. § 169A.52, subd. 6 (2010). Nothing in this section requires seven days' notice or a waiting period before a license revocation is effective. To the contrary, the statute clearly states that revocation becomes effective upon notification. *Id.*

The cases cited by the district court to support its statement that there is a seven-day notice requirement involved constitutional challenges to the implied-consent law because it allows for pre-hearing revocation of drivers' licenses. *See Davis v. Comm'r of Pub. Safety*, 517 N.W.2d 901 (Minn. 1994); *Hamilton v. Comm'r of Pub. Safety*, 600 N.W.2d 720 (Minn. 1999). These cases refer to a separate subdivision of the implied-consent law that requires an officer who is immediately invalidating a person's license upon test refusal or a test result greater than .08 to issue a seven-day temporary license. *See Minn. Stat. § 169A.52, subd. 7(c)(2) (2010)* (containing the current version of the

temporary-license requirement). That subdivision is inapplicable to this case. Rich did not have his license immediately revoked but instead had almost three months of legal driving after his DWI while he waited for the results of his urine test. In addition, Rich is not challenging the constitutionality of the implied-consent law; he is claiming that the commissioner's failure to follow its usual procedure¹ of giving drivers seven days' notice violated his right to due process.

Because the plain language of Minn. Stat. § 169A.52 does not require seven days' notice before the commissioner can revoke a person's driver's license, the district court erred in rescinding the revocation of Rich's driver's license on this basis.

II.

The commissioner also argues that the district court erred by concluding that Rich's right to due process was violated by receiving only four days' notice before his license revocation became effective. The United States and Minnesota Constitutions provide that a person's liberty cannot be deprived by the government "without due process of law." U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 7. "A license to drive is a protected interest that cannot be deprived without procedural due process." *Riehm v. Comm'r of Pub. Safety*, 745 N.W.2d 869, 877 (Minn. App. 2008) (citing *Bell v. Burson*, 402 U.S. 535, 539, 91 S. Ct. 1586, 1589 (1971)), *review denied* (Minn. May 20, 2008). Whether Rich was afforded due process is a constitutional question, which we review de novo. *See State v. Wiltgen*, 737 N.W.2d 561, 566 (Minn. 2007).

¹ The notice in this case was dated May 20, which, had it been mailed that day, would have given Rich seven days' notice. But the parties agree that the notice was not mailed until May 23.

The Minnesota Supreme Court has confirmed that, in the context of the implied-consent statute, “due process is flexible and calls for such procedural protections as the particular situation demands.” *Bendorf v. Comm’r of Pub. Safety*, 727 N.W.2d 410, 415 (Minn. 2007) (citing *Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S. Ct. 2593, 2600 (1972)). The appropriate inquiry in a procedural-due-process case is: “what level of prejudice has the driver suffered?” *Id.* “[A driver] cannot assert a procedural due-process claim without first establishing that he has suffered a direct and personal harm resulting from the alleged denial of his constitutional rights.” *Riehm*, 745 N.W.2d at 877 (quotation omitted). The commissioner argues that Rich failed to demonstrate any harm, observing that he had full driving privileges and could organize his affairs during the three months in which it took to process his urine sample. We agree. Rich failed to argue how he was prejudiced by receiving only four days’ notice as opposed to seven after having a full three months of driving privileges. Accordingly, we conclude that because Rich suffered no prejudice, there was no due-process violation. *See id.*

Because there is no requirement in Minn. Stat. § 169A.52 for the commissioner to provide seven days’ notice to Rich before revoking his driver’s license, and because Rich has not alleged that he was prejudiced by the shorter notice period, we conclude that the commissioner did not violate Rich’s due-process rights, and we reverse.

Reversed.