STATE OF MINNESOTA

IN SUPREME COURT

A18-1491

Court of Appeals McKeig, J.

State of Minnesota,

Respondent,

vs.

Steven Jeffrey Anderson,

Appellant.

Filed: April 15, 2020
Office of Appellate Courts

Keith Ellison, Attorney General, Saint Paul, Minnesota; and

Kurt B. Glaser, Catherine A. Crane, Lexington City Attorneys, Smith & Glaser, LLC, Minneapolis, Minnesota, for respondent.

Paul P. Sarratori, Mesenbourg & Sarratori Law Offices, P.A., Coon Rapids, Minnesota, for appellant.

S Y L L A B U S

Under the plain language of Minn. Stat. §§ 169A.25, subd. 1(b) (2018), and 169A.03 (2016), a license revocation is "present" as an aggravating factor as of its effective date, and may be used to enhance a charge of driving while impaired once judicial review has occurred or the right to review has been waived.

Affirmed.

O P I N I O N

MCKEIG, Justice.

Appellant Steven Anderson was charged with second-degree driving while impaired for refusal to submit to chemical testing, Minn. Stat. § 169A.25, subd. 1(b) (2018), which requires both the refusal to submit to chemical testing and one aggravating factor. In this case, a prior license revocation was the aggravating factor. At the time of the offense, Anderson's license revocation was in effect but had not yet been judicially reviewed. The State waited until the license revocation was sustained to charge Anderson. Applying the plain language of the driving-while-impaired statutory scheme to these facts, we conclude that the State properly used Anderson's license revocation as an aggravating factor to enhance his charge of driving while impaired. Accordingly, we affirm the court of appeals.

FACTS

The facts are not in dispute. This case is the result of two driving-while-impaired incidents, the first occurring on October 2, 2016. Anderson was arrested, and a week later he was notified that his license had been administratively revoked for 1 year. Anderson filed a petition for review of the license revocation, and a hearing date was set for December 28, 2016. The hearing was delayed until April 2017 because of continuances requested by both parties. At that hearing, Anderson waived the right to further review, and the district court sustained the revocation.

On December 18, 2016—after Anderson had petitioned for review of his license revocation but before the revocation was sustained—Anderson was arrested a second time for driving while impaired. He agreed to take a preliminary breath test, but failed to provide

a proper sample because he "only provided short puffs of air and at times sucked on the tube." Anderson was taken to the police department, where he was read the Minnesota Implied Consent Advisory. He said he understood the advisory and wanted to talk to an attorney. After a 10-minute phone call, Anderson agreed to take a breath test. He provided multiple short breaths, kept stopping, blew around the mouthpiece, and otherwise prevented a proper sample. Police determined that Anderson had refused the test.

The State waited until August 2017—after the license revocation related to the October 2016 charge of driving while impaired was sustained—to charge Anderson for the December 2016 incident. He was charged with four counts, including the one on appeal: second-degree driving while impaired for refusal to submit to chemical testing, Minn. Stat. § 169A.25, subd. 1(b). That charge requires one aggravating factor, which the complaint listed as a prior impaired driving-related loss of license—Anderson's October 2016 license revocation.

Anderson filed a motion to dismiss, arguing that the second-degree driving-while-impaired count should be dismissed for lack of probable cause because a license revocation cannot be used as an aggravating factor unless judicial review has occurred or has been waived by the time of the subsequent offense. The district court denied the motion to dismiss.

A trial was held on February 21, 2018. The parties filed an agreement advising the court that the trial would proceed as a stipulated facts and evidence trial. *See* Minn. R. Crim. P. 26.01, subd. 4 (detailing the proper procedure to preserve an issue for appellate review "[w]hen the parties agree that the court's ruling on a specified pretrial issue is

dispositive of the case, or that the ruling makes a contested trial unnecessary").[1] In accordance with Rule 26.01, Anderson entered a not guilty plea, waived his right to a trial by jury, stipulated to certain facts and evidence, and acknowledged that his right of appeal was limited to the pretrial district court order denying his motion to dismiss. The district court found Anderson guilty, and he was sentenced on the second-degree driving-while-impaired count.

Anderson appealed and the court of appeals affirmed. *State v. Anderson*, 931 N.W.2d 640 (Minn. App. 2019). The court of appeals held that "a prior license revocation is present as an aggravating factor to enhance a subsequent DWI offense after a driver receives notice of the revocation." *Id.* at 647. Further, the court of appeals concluded that Anderson's due process rights were not violated because Anderson had the opportunity for judicial review of the revocation before charging. *Id.* at 649.

ANALYSIS

The question of whether Anderson's license revocation can be used as an aggravating factor involves the application of law to undisputed facts, and so our review is de novo. *See State v. Wiltgen*, 737 N.W.2d 561, 566 (Minn. 2007). This review involves the interpretation of the second-degree driving-while-impaired statute, Minn. Stat. § 169A.25, subd. 1(b), and the related statutory definitions within Minn. Stat. § 169A.03 (2016). We also review issues of statutory interpretation de novo. *State v. Thonesavanh*,

[1] A ruling can make a contested trial unnecessary "in a DWI case where the only issue is the validity of one or more qualified prior impaired driving incidents as a charge enhancement." Minn. R. Crim. P. 26 cmt.

904 N.W.2d 432, 435 (Minn. 2017). "When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit." Minn. Stat. § 645.16 (2018).

A person is guilty of second-degree driving while impaired if he or she has refused to submit to a chemical test, Minn. Stat. § 169A.20, subd. 2 (2016), and "one aggravating factor was present when the violation was committed." Minn. Stat. § 169A.25, subd. 1(b).

A series of definitions laid out in section 169A.03 detail how a driver's license revocation like Anderson's could qualify as an aggravating factor for purposes of Minnesota Statutes chapter 169A (2016). First, "aggravating factor" includes "a qualified prior impaired driving incident within the ten years immediately preceding the current offense." Minn. Stat. § 169A.03, subd. 3(1). A "qualified prior impaired driving incident" includes "prior impaired driving-related losses of license." Minn. Stat. § 169A.03, subd. 22. And, most importantly for this case, a "prior impaired driving-related loss of license" includes a "driver's license suspension, revocation, cancellation, denial, or disqualification under . . . 169A.50 to 169A.53 (implied consent law)." Minn. Stat. § 169A.03, subd. 21(a)(1). Sections 169A.50 to 169A.53 are Minnesota's "Implied Consent Law." Minn. Stat. § 169A.50. These sections set out the requirements for chemical testing; the consequences of refusing chemical testing, including license revocation; and the procedure for administrative and judicial review of license revocations.

Read together, these statutes provide that a driver's license revocation under the Implied Consent Law can be used as an aggravating factor for purposes of Minn. Stat. § 169A.25, subd. 1(b), if the license revocation was "present when the violation was

committed." Anderson asserts that a license revocation is not "present" as an aggravating factor until it is judicially reviewed or the right to review has been waived. If neither review nor waiver has occurred by the time of the offense, Anderson argues that the license revocation cannot be used as an aggravating factor. Under Anderson's interpretation, this defect cannot be cured by delaying charging until after review has occurred, as the State did here. We disagree.

As detailed above, Minn. Stat. § 169A.03 includes a host of definitions related to which driving incidents qualify as aggravating factors. The statute does not, however, define the word "present," as that word is used in Minn. Stat. § 169A.25, subd. 1(b). "We therefore look to dictionary definitions to determine [the word's] common and ordinary meaning[]." *Thonesavanh*, 904 N.W.2d at 436. "Present" simply means "existing or occurring now." *New Oxford American Dictionary* 1381 (3d ed. 2010). When we apply this definition to the driving-while-impaired statutory scheme, the question becomes when a license revocation "exists" as an aggravating factor.

A license revocation under the Implied Consent Law, reviewed or not, comes into existence as of its effective date. A license revocation "becomes effective at the time the commissioner . . . notifies the person of the intention to revoke, disqualify, or both, and of revocation or disqualification." Minn. Stat. § 169A.52, subd. 6; *see Heddan v. Dirkswager*, 336 N.W.2d 54, 63 (Minn. 1983) (holding prehearing license revocations constitutional, with an emphasis on the availability of prompt post-revocation hearings).

Upon its effective date, a revocation comes with immediate legal consequences for the license holder. Minn. Stat. § 169A.52, subd. 6. Revocation of a driver's license results

in a revocation of the driving privilege. Minn. Stat. § 171.02 (2018). A driver whose license has been revoked only becomes eligible for a limited license 15 days after the revocation's effective date. Minn. Stat. § 171.30, subd. 2a(1) (2018). Even then, issuance of a limited license is discretionary; is appropriate only under certain, specified circumstances; and can be subject to a broad swath of conditions. *Id.*, subd. 1(b)–(c) (2018). And although a person who has had a license revoked may petition for administrative or judicial review, filing a petition does not stay a license revocation, except under limited circumstances. Minn. Stat. § 169A.53, subds. 1, 2(a), (c).

These statutes do not mandate, or even suggest, that to be used as an aggravating factor, a license revocation must be reviewed by the time of a subsequent offense. To the contrary, the language suggests that the Legislature intended that a license revocation's legal consequences begin immediately upon the revocation's effective date. Use of the license revocation to enhance a subsequent charge of driving while impaired is one such legal consequence.

Anderson contends that Minn. Stat. § 169A.03, subd. 21(a)(1), dictates otherwise. Subdivision 21(a)(1) defines qualifying losses of license to include license revocations under "169A.50 to 169A.53 (implied consent law)." Because section 169A.53—the section detailing administrative and judicial review of license revocations—was included, Anderson argues, the Legislature intended that license revocations qualify as aggravating factors only after review or waiver of the right to review. Anderson misapprehends this language.

We read the citation to the Implied Consent Law to mean just that: the Legislature chose to cite the Implied Consent Law in the manner set forth in section 169A.50. The citation is no signal that license revocations are not "present" as aggravating factors as of their effective dates.

Our decision in *State v. Wiltgen* does not compel a different reading. In *Wiltgen*, the State used an unreviewed license revocation to support probable cause for a charge of second-degree driving while impaired. 737 N.W.2d at 566. The defendant argued that the State "could not constitutionally charge her with second-degree DWI by using an unreviewed license revocation as one of the aggravating factors." *Id.* We agreed, concluding that the use of license revocations that were unreviewed *at the time of charging* violated due process. *Id.* at 571. We suggested in a footnote, however, that delaying charging until after review could remedy any constitutional defects:

> This result does not seriously prejudice the state because the state can delay the issuance of a second-degree DWI complaint until after the implied consent hearing has been conducted and the revocation has been sustained, or can charge third-degree DWI before the implied consent hearing and amend the complaint to add a second-degree DWI charge after the hearing.

Id. at 572 n.7.

The parties agree that footnote 7 was dicta. *See State ex rel. Foster v. Naftalin*, 74 N.W.2d 249, 266 (Minn. 1956) (defining dicta as "expressions in a court's opinion which go beyond the facts before the court and therefore are . . . not binding in subsequent cases"). *But see State v. Heinonen*, 909 N.W.2d 584, 589 n.4 (Minn. 2018) ("[W]hen we have expressed an opinion on a question directly involved and argued by counsel, even if that opinion is not entirely necessary to the decision, it 'should not be lightly disregarded.' "

(quoting *State v. Rainer*, 103 N.W.2d 389, 396 (Minn. 1960))). As dictum, footnote 7 is not dispositive of the discussion in this case, but, in any event, it is persuasive.

Having concluded that a license revocation under the Implied Consent Law is "present" beginning with the effective date of the revocation and, per *Wiltgen*, may be used to enhance a charge of driving while impaired once it has been judicially reviewed and sustained or the right to review has been waived, we turn now to the facts of this case. After Anderson was first arrested for driving while impaired, the Commissioner of Public Safety notified Anderson that his license had been revoked for a period of 1 year, effective October 9, 2016, based on his refusal to submit to a chemical test. *See* Minn. Stat. § 169A.52, subd. 3(a)(1). Although Anderson petitioned for judicial review of the revocation as permitted under Minn. Stat. § 169A.53, subd. 2, and review had not yet occurred, the license revocation was in effect at the time of the December 2016 offense. This satisfies the requirement in Minn. Stat. § 169A.25, subd. 1(b), that an aggravating factor be present at the time of the offense.

Despite his assertions to the contrary, our interpretation does not offend Anderson's right to due process under the federal or state constitutions. *See* U.S. Const. amends. V, XIV; Minn. Const. art. I, § 7. When deciding whether the use of a license revocation as an aggravating factor violates the right to due process, we use the three-part test from *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), which balances the private interest at stake, the risk of erroneous deprivation, and the government's interest. *Wiltgen*, 737 N.W.2d at 568.

The private interest in this case is substantial, as it involves a deprivation of liberty. *See id.* at 569. If an aggravating factor was present at the time of his second offense,

Anderson would be subject to a minimum of 30 days of incarceration. Minn. Stat. § 169A.275, subd. 1. The government similarly has a compelling interest, relying on enhanced charges to promote highway safety and "keep impaired drivers off the road, particularly those drivers who have shown a repeated willingness to drive while impaired," because " 'drunken drivers pose a severe threat to the health and safety of the citizens of Minnesota.' " *Wiltgen*, 737 N.W.2d at 570 (quoting *Bendorf v. Comm'r of Pub. Safety*, 727 N.W.2d 410, 416–17 (Minn. 2007)). Third, and most importantly for this case, the risk of erroneous deprivation is negligible. Anderson's license revocation was sustained at a hearing, which he requested by petition. Although he ultimately waived his right to further review, Anderson does not, and could not, assert that he has not been afforded the requisite review.

On balance, Anderson's liberty interest and the negligible risk of erroneous deprivation do not outweigh the government's interest in highway and public safety. This conclusion is consistent with our decision in *Wiltgen*. *Id.* ("[T]here remains an opportunity for meaningful review of the administrative license revocation in the implied consent proceeding, but *until that review has been provided*, the same due process concerns arise from the use of the revocation." (emphasis added)).

In summary, Minn. Stat. §§ 169A.25, subd. 1(b), and 169A.03 are clear and unambiguous as applied to the facts of this case. A license revocation is "present" as an aggravating factor as of its effective date, and it may be used to enhance a charge of driving

while impaired once review has occurred or the right to review has been waived.[2] Accordingly, the State properly used Anderson's license revocation as an aggravating factor.

CONCLUSION

For the foregoing reasons, we affirm the decision of the court of appeals.

Affirmed.

[2] In so concluding, we note that prosecutorial discretion is not unlimited. In cases brought under chapter 169A, "indictments or complaints shall be found or made and filed in the proper court within three years after the commission of the offense." Minn. Stat. § 628.26(k) (2016). Even within the statute of limitations, the law protects would-be defendants from undue preaccusation delays for improper purposes. *See State v. F.C.R.*, 276 N.W.2d 636, 639 (Minn. 1979) ("The due process clause of the Fifth Amendment guards against long delays when the Sixth Amendment right has not attached and the statute of limitations has not yet run."); *State v. Anderson*, 275 N.W.2d 554, 555 (Minn. 1978) ("[T]he due process clause protects against delays, including preaccusation delays, that are planned by the prosecution for the purpose of gaining a tactical advantage, if the delays result in actual prejudice to the defendant.").