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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0460**

Justin Wade Henrickson, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

**Filed January 13, 2009
Affirmed
Johnson, Judge**

Carver County District Court
File No. 10-CV-07-0705

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Considered and decided by Schellhas, Presiding Judge; Minge, Judge; and
Johnson, Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

Justin Wade Henrickson pleaded guilty in a North Dakota court to operating a
vehicle with an alcohol concentration over .08. Because of that conviction, the
Minnesota Department of Public Safety revoked his Minnesota driver's license.
Henrickson petitioned for reinstatement, but the district court denied his petition. On

appeal, Henrickson argues that the commissioner may not revoke his Minnesota license based on his North Dakota conviction because North Dakota uses a breath-test machine that measures alcohol content differently than the machine customarily used in Minnesota. For the reasons explained below, we affirm.

FACTS

In October 2006, Henrickson, a resident of Minnesota, was arrested by the North Dakota Highway Patrol for driving under the influence of alcohol. Within two hours of his arrest, a law enforcement officer administered a breath test, which revealed that Henrickson had an alcohol concentration of .15. On May 10, 2007, Henrickson pleaded guilty in a trial court in Barnes County, North Dakota, to driving with an alcohol concentration of .08 or higher in violation of chapter 39-08-01 of the North Dakota Century Code.

Shortly after the North Dakota trial court entered its judgment, the state of North Dakota sent notice of Henrickson's conviction to the Minnesota Department of Public Safety. On May 31, 2007, the department revoked Henrickson's driver's license pursuant to Minn. Stat. § 171.17, subd. 1(a)(9) (2006). In June 2007, Henrickson petitioned for reinstatement of his license. In February 2008, the district court denied the petition. Henrickson appeals.

DECISION

Henrickson argues that the department may not revoke his Minnesota driver's license based on his North Dakota conviction because North Dakota uses an Intoxilyzer breath-test machine with a different formula for measuring alcohol concentration than is

used in the Minnesota version of the Intoxilyzer machine. A district court's application of law to undisputed facts is subject to a de novo standard of review. *Reeves v. Commissioner of Pub. Safety*, 751 N.W.2d 117, 121 (Minn. App. 2008).

Our analysis begins with the following Minnesota statute:

The [D]epartment [of Public Safety] shall immediately revoke the license of a driver upon receiving a record of the driver's conviction of:

....

(2) a violation of section 169A.20 [driving while impaired]; [or]

....

(9) an offense in another state that, if committed in this state, would be grounds for revoking the driver's license

....

Minn. Stat. § 171.17, subd. 1(a) (2006).

To implement this statute and other statutory provisions concerning motor-vehicle licensure, Minnesota and other cooperating states have adopted the Driver License Compact. *See* Minn. Stat. § 171.50 (2006). The compact requires participating states to “report each conviction of a person from another party state occurring within its jurisdiction to the licensing authority of the home state of the licensee.” *Id.*, art. III. The compact defines a “conviction” as “a conviction of any offense related to the use or operation of a motor vehicle which is prohibited by state law, municipal ordinance, or administrative rule or regulation . . . [and] is required to be reported to the licensing authority.” *Id.*, art. II(c). Each jurisdiction must give full effect to convictions obtained in other states:

The licensing authority in the home state, for the purposes of suspension, revocation, or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported, pursuant to article III of this compact, as it would if such conduct had occurred in the home state, in the case of convictions for:

. . . .

(2) driving a motor vehicle while under the influence of intoxicating liquor or narcotic drug, or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle

Id., art. IV(a)(2).

In *Anderson v. State, Dep't of Pub. Safety & Dep't of Transp.*, 305 N.W.2d 786 (Minn. 1981), the supreme court held that the revocation of a driver's license under section 171.17 was properly based on the appellant's DWI conviction in Colorado. *Id.* at 787. The court acknowledged that the required quantum of proof concerning impairment was less in Colorado than in Minnesota. *Id.* Nonetheless, the supreme court held that the Colorado conviction could serve as the basis for revoking a Minnesota driver's license.

Id. The supreme court reasoned as follows:

When taking into consideration the differing evidentiary standards relating to the admissibility of blood alcohol test results . . . it undoubtedly requires less proof for a prosecutor in Colorado to prove that a person's capacity to drive is impaired than it does for a prosecutor in Minnesota to make the same showing. However, *the elements of the Colorado offense of driving while ability impaired are the same elements which, if proven in Minnesota, would justify a conviction for the offense of driving while under the influence.* The record does not show whether the driver submitted to a blood alcohol test or, if he did, what the results of that test were. However, defendant did plead guilty to the

offense, and we conclude that the district court erred in determining that the revocation was invalid.

Id. (emphasis added).

The North Dakota statute pursuant to which Henrickson pleaded guilty states:

1. A person may not drive or be in actual physical control of any vehicle upon a highway or upon public or private areas to which the public has a right of access for vehicular use in this state if any of the following apply:

a. That person has an alcohol concentration of at least eight one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after the driving or being in actual physical control of a vehicle.

N.D. Cent. Code § 39-08-01 (Supp. 2007). Similarly, Minnesota has a statute that provides:

It is a crime for any person to drive, operate, or be in physical control of any motor vehicle within this state or on any boundary water of this state:

. . . .

(5) when the person's alcohol concentration at the time, or as measured within two hours of the time, of driving, operating, or being in physical control of the motor vehicle is 0.08 or more

Minn. Stat. § 169A.20, subd. 1 (2006). A violation of section 169A.20, subdivision 1, by a person licensed to drive in Minnesota triggers the automatic revocation of the person's driver's license. Minn. Stat. § 171.17, subd. 1(a)(2).

Based on a simple comparison of the North Dakota and Minnesota statutes, it is apparent that the elements of the North Dakota offense of driving while impaired are "the same elements which, if proven in Minnesota, would justify a conviction for the offense

of driving while under the influence.” *Anderson*, 305 N.W.2d at 787. Each statute sets forth the same basic requirements of a DWI offense: (1) “physical control” of a vehicle, and (2) alcohol concentration of .08 within two hours of that physical control. Minn. Stat. § 169A.20, subd. 1; N.D. Cent. Code § 39-08-01. If Henrickson had been convicted in Minnesota of the offense to which he pleaded guilty in North Dakota, his license would have been revoked. *See Anderson*, 305 N.W.2d at 787; *Dempski v. Commissioner of Pub. Safety*, 520 N.W.2d 532, 533 (Minn. App. 1994); *Recker v. State, Dep’t of Pub. Safety*, 375 N.W.2d 554, 556 (Minn. App. 1985); *Byrd v. Commissioner of Pub. Safety*, 348 N.W.2d 402, 404 (Minn. App. 1984). It is irrelevant that North Dakota and Minnesota use slightly different methods of measuring alcohol concentration. *See Anderson*, 305 N.W.2d at 787. Furthermore, revocation is required by the terms of the Driver License Compact, which the legislature has incorporated into the Minnesota Statutes. By revoking Henrickson’s license upon receipt of notice of his conviction in North Dakota, the commissioner gave “the same effect to the conduct reported [in North Dakota] . . . as it would if such conduct had occurred in” Minnesota. Minn. Stat. § 171.50, art. IV (a)(2).

Henrickson contends that his North Dakota conviction cannot be the basis of a license revocation in Minnesota because of this court’s opinion in *State v. Friedrich*, 436 N.W.2d 475 (Minn. App. 1989), in which we held that an uncounseled guilty plea to DWI in another state may not be used to enhance a sentence for a subsequent DWI conviction in Minnesota. *Id.* at 478. The commissioner offers a two-part response. First, he argues that *Friedrich* was overruled by *State v. Schmidt*, 712 N.W.2d 530 (Minn.

2006). Second, he argues that *Friedrich* is inapplicable because it is a criminal case that is concerned with the constitutional right to counsel. We have doubts about the first counterargument, but the second counterargument is correct. Criminal cases such as *Schmidt* and *Friedrich* do not apply in the present context “because license revocation ‘is not a punishment but is rather an exercise of the police power for the protection of the public.’” *Casci v. Commissioner of Pub. Safety*, 360 N.W.2d 443, 445 (Minn. App. 1985) (quoting *State, Dep’t of Highways v. Normandin*, 284 Minn. 24, 26, 169 N.W.2d 222, 224 (1969)). As reflected above, the applicable law is contained in *Anderson* and the cases that follow *Anderson*.

In sum, the Minnesota Department of Public Safety properly revoked Henrickson’s Minnesota driver’s license on the basis of his North Dakota DWI conviction.

Affirmed.