STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0743

State of Minnesota,
Respondent,

vs.

Michael Dana Patterson,
Appellant

Filed December 30, 2013
Affirmed; motion granted
Worke, Judge

Pipestone County District Court
File No. 59-CR-12-495

Lori Swanson, Attorney General, St. Paul, Minnesota; and

James E. O'Neill, Pipestone County Attorney, Damain D. Sandy, Assistant County Attorney, Pipestone, Minnesota (for respondent)

Michael D. Patterson, Jasper, Minnesota (pro se appellant)

Considered and decided by Stauber, Presiding Judge; Worke, Judge; and Bjorkman, Judge.

U N P U B L I S H E D O P I N I O N

WORKE, Judge

Appellant challenges his two convictions of driving while impaired (DWI), arguing that his license was not previously revoked under the enhancement statute, that the jury was instructed incorrectly, that he was barred from presenting a relevant case,

and that the district court erred in correcting the sentencing order. Because the enhancement statute recognizes revocation of reciprocal driving privileges as a prior revocation, and because the district court did not err in its jury instructions, ruling on the relevance of caselaw, or in correcting a clerical error, we affirm.

FACTS

On December 1, 2012, appellant Michael Dana Patterson was arrested on suspicion of DWI. Patterson submitted to a breath test, which revealed an alcohol concentration of .15. He was charged with driving while under the influence of alcohol, in violation of Minn. Stat. § 169A.20, subd. 1(1) (2012), and driving with an alcohol concentration in excess of .08, in violation of Minn. Stat. § 169A.20, subd. 1(5). Patterson was licensed to drive in California and had never received a Minnesota driver's license, but his Minnesota driving privileges were revoked after a 2003 impaired-driving incident. The current charges were thus enhanced to third-degree gross misdemeanors under Minn. Stat. § 169A.26, subds. 1(a), 2 (2012).

Pro se, Patterson based his legal strategy on interpreting the enhancement statute to require the revocation of an actual Minnesota driver's license. At his jury trial, Patterson introduced his California driving record, which showed no revocations. The district court denied Patterson's request to subpoena the Pipestone County sheriff to testify that Patterson "did not suffer a license revocation in 2003." The district court also denied as irrelevant Patterson's request to present the case of *State v. Wiltgen*, 737 N.W.2d 561 (Minn. 2007), in which the supreme court held that a prior impaired-driving incident could not be used as an aggravating factor if it had not yet been adjudicated.

The district court instructed the jury using standard form instructions and excised irrelevant portions describing how to count multiple prior qualified offenses. The jury found Patterson guilty of both counts of third-degree DWI.

The district court imposed a stayed sentence of 365 days in jail, placed Patterson on probation, and required him to serve 30 days in jail. The written sentencing order incorrectly stated that Patterson had been sentenced to 30 days in jail and did not reflect that he was given a 365-day stayed sentence. The district court corrected the written sentencing order sua sponte to conform to the sentence pronounced on the record at the sentencing hearing. Patterson objected to the correction and moved for a hearing. The district court held that it had made a proper correction of a clerical mistake and denied Patterson's motion. This appeal followed.

D E C I S I O N

Prior revocation

The jury found Patterson guilty of third-degree DWI because he had his reciprocal Minnesota driving privileges revoked in 2003. *See* Minn. Stat. §§ 169.26, subds. 1(a), 2 (stating that a DWI offense may be enhanced to a third-degree gross misdemeanor if "one aggravating factor was present when the violation was committed"); .03, subds. 3(1), 22 (2012) (stating that a prior impaired driving-related loss of license within ten years of the present offense is an aggravating factor). Patterson does not contest that his driving privileges were revoked under a qualifying impaired-driving statute, but maintains that the phrase "driver's license" renders the statute inapplicable to the revocation of driving

privileges afforded an out-of state licensee.[1] We review questions of statutory construction de novo. *State v. Bluhm*, 676 N.W.2d 649, 651 (Minn. 2004).

Minnesota law defines a "[p]rior impaired driving-related loss of license" as "a driver's license suspension, revocation, cancellation, denial, or disqualification" under various impaired-driving statutes. Minn. Stat. § 169A.03, subd. 21(a) (2012). Any term not defined in section 169A, such as "driver's license," is afforded the meaning set forth in Minn. Stat. § 169.011 (2012) if available. *Id.* subd. 1(b) (2012). In defining a "valid license," section 169.011, subdivision 91 cross-references Minn. Stat. § 171.01, subd. 49a (2012), which defines a "[v]alid license" to include a "license to operate a motor vehicle issued . . . by another state or jurisdiction if specified." Section 171.01 further specifies that the term "[l]icense" includes "the privilege of any person to drive a motor vehicle whether or not the person holds a valid license" and "any nonresident's operating privilege." Minn. Stat. § 171.01, subd. 37(2), (3) (2012).

We have interpreted these statutes to mean that "[t]he statutory definition of license includes every type of driving privilege." *Schultz v. Comm'r of Pub. Safety*, 365 N.W.2d 304, 306 (Minn. App. 1985). We have further held that a person who has never carried an actual driver's license may still be convicted of aggravated DWI based on the revocation of driving privileges. *State v. Clark*, 361 N.W.2d 104, 108 (Minn. App.

[1] Patterson's contention that there is a legal distinction between the revocation of driving privileges and the revocation of a driver's license forms the basis for nearly all of his challenges on appeal—those based on probable cause, denial of a motion for acquittal, denial of permission to call the sheriff as a witness, prosecutorial misconduct, and jury instructions.

1985). We now hold that this reasoning extends to the revocation of driving privileges for an out-of-state licensee.

Because such a revocation constitutes an aggravating factor under Minn. Stat. § 169A.26, the district court did not err in holding that the complaint established probable cause, denying Patterson's motion for dismissal for insufficient evidence, refusing to allow Patterson to call the Pipestone County sheriff to testify, instructing the jury, or failing to find prosecutorial misconduct.

Trial

Patterson argues that the district court barred him from presenting *Wiltgen*, 737 N.W.2d at 572, in which the supreme court held that a prior impaired-driving incident could not be used as an aggravating factor if judicial review of the prior incident was denied or pending. The district court ruled that *Wiltgen* was irrelevant to the case. Nothing in the limited appellate record indicates that judicial review of Patterson's previous revocation was denied or pending at the time of his trial. The district court did not err.

Patterson also argues that the district court inappropriately excised parts of the standard jury instructions. District courts are afforded "considerable latitude" in selecting language for jury instructions. *State v. Baird*, 654 N.W.2d 105, 113 (Minn. 2002). We review jury-instruction challenges for an abuse of discretion. *State v. Cole*, 542 N.W.2d 43, 50 (Minn. 1996). The excised portion instructed jury members that they were required to count the number of prior qualified impaired-driving incidents. *See* 10A *Minnesota Practice*, CRIMJIG 29.22 (2006). Because the state introduced evidence of

only one prior qualified incident, the district court was well within its discretion to excise the irrelevant instruction on the counting of offenses.

Sentence

Patterson challenges the district court's corrections of its written sentencing order to conform to the sentence announced orally at the sentencing hearing.

"Clerical mistakes in a judgment, order, or in the record arising from oversight or omission may be corrected by the court at any time, or after notice if ordered by the court." Minn. R. Crim. P. 27.03, subd. 10. The record shows that the written sentencing order conflicted with the unambiguous, controlling oral sentence. *See State v. Staloch*, 643 N.W.2d 329, 331 (Minn. App. 2002) (holding that an unambiguous orally pronounced sentence controls over a written order when the two conflict). The district court appropriately corrected the written sentencing order.

Motion

The state moved to strike five pages of Patterson's appendix that contained materials beyond the scope of the appellate record. The record on appeal includes the papers filed in the district court, as well as trial exhibits and district-court transcripts. Minn. R. Civ. App. P. 110.01. The record reveals that the documents identified by the state are outside the appellate record. We have therefore not considered those documents in reaching our decision, and the state's motion to strike is granted.

Affirmed; motion granted.