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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0929**

Justin Robert Price, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

**Filed February 12, 2018
Affirmed
Peterson, Judge**

Becker County District Court
File No. 03-CV-17-562

Zachary H. Johnson, Thomason, Swanson & Zahn, PLLC, Park Rapids, Minnesota (for appellant)

Lori Swanson, Attorney General, Amy Tripp-Steiner, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Bjorkman, Presiding Judge; Peterson, Judge; and Larkin, Judge.

UNPUBLISHED OPINION

PETERSON, Judge

This appeal is from a district court order sustaining the revocation of appellant's Minnesota driver's license following his conviction of an impaired-driving offense in Michigan. We affirm.

FACTS

On November 13, 2016, appellant Justin Robert Price was arrested in Michigan and charged with two offenses: operating a vehicle while intoxicated and possession of a firearm under the influence. At his plea hearing, Price admitted to drinking two-and-a-half or three beers, and that his “evidentiary breath tests” revealed “a [0.11] and a [0.12].” It was also established that Price was pulled over by law enforcement after “he made a wide turn and hit the fog line, and then . . . weaved within the lane.” When the Michigan judge asked Price if his alcohol consumption “made it less likely that [he] could safely drive the car,” Price answered, “Yes, your Honor.” Pursuant to Price’s negotiated plea agreement, the Michigan court accepted his guilty pleas to a reduced charge of operating a vehicle while visibly impaired (OVWI) and to the firearm offense.

Following Price’s convictions, the Minnesota Commissioner of Public Safety (commissioner) received certification of Price’s Michigan impaired-driving conviction, revoked Price’s Minnesota driver’s license for 30 days, and “disqualified” Price from using his commercial driver’s license for one year. Price petitioned to reinstate the licenses, arguing that the Michigan impaired-driving offense requires only that a driver’s ability to operate a vehicle be “visibly impaired”; it does not require that a driver be “under the influence.” He also asserted that he would not be able to travel for work and was in danger of permanently losing his job if he was not able to drive.

The district court rejected Price’s “primary contention . . . that the conviction entered against him in Michigan for Operating While Visibly Impaired does not allow the

revocation of his license in Minnesota” and denied his petition. The district court ruled that the Michigan driving conviction was in conformity with Minnesota law and Price’s driving conduct in Michigan would constitute a driving-while-impaired (DWI) offense in Minnesota. This appeal follows.

DECISION

A person whose driver’s license has been revoked or disqualified may petition the district court for a de novo hearing on whether the petitioner is subject to revocation or disqualification. Minn. Stat. § 171.19 (2016). The petitioner bears the burden of proof on entitlement to reinstatement, which the district court will order if the commissioner’s decision is contrary to law. *Pallas v. Comm’r of Pub. Safety*, 781 N.W.2d 163, 166 (Minn. App. 2010). We “defer to the district court’s credibility determinations and ability to weigh the evidence,” but we “review de novo the district court’s application of the law.” *Constans v. Comm’r of Pub. Safety*, 835 N.W.2d 518, 523 (Minn. App. 2013).

In Minnesota, it is a crime “for any person to drive, operate, or be in physical control of any motor vehicle . . . when . . . the person is under the influence of alcohol.” Minn. Stat. § 169A.20, subd. 1(1) (2016).¹ This offense includes “the act of driving a motor vehicle while ability or *capacity to drive is impaired* by alcohol.” *Anderson v. State, Dep’t of Pub. Safety*, 305 N.W.2d 786, 787 (Minn. 1981) (emphasis in original). Impairment must be shown “in some way or to some degree,” *State v. Shepard*, 481 N.W.2d 560, 562

¹ DWI is a misdemeanor, if no aggravating factors are present. Minn. Stat. § 169A.27, subd. 1, 2 (2016).

(Minn. 1992), including “outward manifestations of intoxication.” *State v. Elmourabit*, 373 N.W.2d 290, 293 (Minn. 1985). But a DWI offense under section 169A.20, subdivision 1(1), does not require a specific level of intoxication, as compared to a DWI offense under Minn. Stat. § 169A.20, subd. (1)(5) (2016), which requires proof that the driver’s alcohol concentration “is 0.08 or more.” See *State v. Tanksley*, 809 N.W.2d 706, 711 (Minn. 2012) (stating that “lack of impairment [is] irrelevant” in proving a DWI offense that is premised on the person’s alcohol concentration).

The commissioner “shall immediately revoke the license of a driver upon receiving a record of the driver’s conviction of . . . a violation of section 169A.20 [or] . . . 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)(2) and (9) (2016).² The record establishes that Price consumed alcohol and that his ability to drive was impaired by the alcohol. Price was observed driving erratically; he admitted that he consumed alcohol; and he admitted that his consumption “made it less likely that [he] could safely drive the car.” Price’s conduct, if it occurred in Minnesota, would be grounds for revoking his licenses under Minn. Stat. § 169A.20, subd. 1(1).

² The revocation period for a first-time DWI offense is “not less than 30 days.” Minn. Stat. § 169A.54, subd. 1(1) (2016). The period of disqualification for a commercial license following a DWI offense is one year. Minn. Stat. § 171.165, subd. 1 (2016); 49 C.F.R. § 383.51(b)(1) (2016) (“Table 1” sets forth a one-year period of disqualification for a commercial driver who “operates a motor vehicle and is convicted of . . . [b]eing under the influence of alcohol as prescribed by State law.”).

Price argues that the Michigan misdemeanor OVWI offense of driving “while visibly impaired” by alcohol³ does not require “such a substantial degree of impairment” as the Minnesota misdemeanor DWI offense of driving “under the influence of alcohol.” We disagree. In Michigan, the alcohol consumption must cause a driver to be “visibly impaired.” Visible impairment is shown when “the defendant’s ability to drive [is] so weakened or reduced by consumption of intoxicating liquor that defendant drove with less ability than would an ordinary, careful and prudent driver. Such weakening or reduction of ability to drive must be visible to an ordinary, observant person.” *People v. Calvin*, 548 N.W.2d 720, 722-23 (Mich. Ct. App. 1996) (quotation omitted), *review denied* (Mich. Jan. 31, 1997). In Minnesota, the alcohol consumption must cause the person to be “under the influence,” so that the person’s ability to drive is impaired “in some way or to some degree.” *Shepard*, 481 N.W.2d at 562; *Anderson*, 305 N.W.2d at 787. The elements of both offenses require impairment of a driver’s ability to operate a motor vehicle due to alcohol consumption. The language of the statutes differs, but the statutes use similar criteria to prohibit identical conduct. In *Anderson*, the supreme court noted that “courts in

³ The Michigan misdemeanor impaired-driving offense of OVWI is defined as follows:

A person, whether licensed or not, shall not operate a vehicle upon a highway . . . when, due to the consumption of alcoholic liquor, a controlled substance, or other intoxicating substance, or a combination of alcoholic liquor, a controlled substance, or other intoxicating substance, the person’s ability to operate the vehicle is visibly impaired. If a person is charged with violating subsection (1), a finding of guilty under this subsection may be rendered.

Mich. Comp. Laws § 257.625(3), (9) (2016).

other states having [DWI] statutes of similar phraseology and purpose have generally interpreted the phrase [“under the influence of alcohol”] to cover driving by a person who has drunk enough liquor so that his capacity to drive is impaired in some way.” 305 N.W.2d at 787. Applying this interpretation, Price’s impaired-driving offense in Michigan, if committed in this state, would be grounds for revoking Price’s driver’s license.

Affirmed.