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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0853**

Jefferson Carl Pace, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

**Filed April 1, 2019
Affirmed
Jesson, Judge**

Mille Lacs County District Court
File No. 48-CV-17-1171

Rodd Tschida, Minneapolis, Minnesota (for appellant)

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Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Johnson, Judge; and Jesson,
Judge.

UNPUBLISHED OPINION

JESSON, Judge

Appellant Jefferson Carl Pace challenges the revocation of his driver's license resulting from a failed breath test after his fall through a frozen lake on an ATV. Although the police officer mistakenly did not revoke Pace's license at the time of his failed breath test, he later did so by mailing a notice of revocation. After an implied-consent hearing,

the district court sustained the license revocation. Because the revocation of Pace's driver's license did not violate his statutory or procedural due process rights, we affirm.

FACTS

On February 18, 2017, a Mille Lacs police officer responded to a 911 call regarding an ATV in a lake and a man, appellant Jefferson Carl Pace, who had fallen through the ice. When the officer arrived, Pace was being evaluated by medical personnel, so the officer spoke with witnesses who helped get Pace out of the water. They told the officer that Pace smelled like alcohol.

The officer then spoke with Pace, who was wet and agitated, and confirmed that Pace smelled like alcohol. Accordingly, the officer conducted various field sobriety tests and administered a preliminary breath test, which reflected an alcohol concentration of 0.09. The officer, believing Pace was unfit to be operating an ATV, arrested him and read him the implied-consent advisory relevant for off-road recreational vehicles. After being provided time to consult with an attorney, Pace agreed to a breath test, which registered an alcohol concentration above .08. Although Pace's breath test revealed an alcohol concentration above the legal limit, the officer mistakenly believed that Pace's driving privileges were not subject to revocation. As such, the officer did not revoke Pace's driver's license.

A few months later, in April 2017, the Minnesota Department of Public Safety notified the officer that he should have revoked Pace's license. The officer then mailed a notice of revocation, dated May 8, 2017, to Pace, which stated that his license would be revoked seven days from the date of the letter. According to Pace, he received the letter

on either May 10 or May 11, 2017. Although the temporary license was valid for seven days—from May 8th until May 15th—Pace did not have seven days of notice of the temporary license because he received it two to three days after it was mailed.

Pace challenged the revocation of his driver's license on the grounds that he received inadequate notice. At the implied-consent hearing, the officer testified that at the time Pace's breath test indicated an alcohol concentration above the legal limit, he did not revoke Pace's license or give him a seven-day temporary license. Pace testified that he continued driving from the time of the incident in February until his license was revoked in May, and explained that he was harmed by the shortened notice because he had to find rides to work, tell his boss about the situation, and could not attend some after-work seminars. According to Pace, it would have been easier for him to coordinate his work transportation if he had the full seven days to do so. Pace also testified that although the notice he received stated that there was information on the back relating to judicial and administrative review, the back of the notice he received was blank. Pace stated that based on the notice alone, he did not know how to challenge or appeal the revocation of his driver's license.

The district court concluded that Pace received adequate notice of the revocation of his driver's license when he received the letter from the officer. Further, the district court rejected Pace's arguments about notice as they related to procedural due process, determining that he did not suffer any direct and personal harm from the failure to include the judicial and administrative review information with the notice or the less than seven-day notice of his temporary license.

Pace subsequently filed motions for amended findings, a new trial, and relief from the district court's original order, but the district court denied each of those motions and sustained the revocation of Pace's driver's license. Pace appeals, seeking reinstatement of his driver's license.

D E C I S I O N

Pace argues that the manner in which his driver's license was revoked violated both the relevant statute, Minnesota Statutes § 169A.52 (2018), and his right to procedural due process pursuant to the United States and Minnesota Constitutions.

To assess Pace's arguments, we first examine the backdrop of typical license revocations. Generally, after a failed alcohol test, the commissioner revokes an individual's driver's license. Minn. Stat. § 169A.52, subd. 4(a). That process involves a peace officer providing the individual with a notice of intention to revoke, and revocation becomes effective at that time. *Id.*, subds. 6, 7(a). At the time of revocation, the peace officer invalidates the individual's driver's license, issues the person a seven-day temporary license, and notifies the commissioner. *Id.*, subd. 7(c)(1)-(3). Afterwards, individuals are entitled to seek administrative or judicial review. Minn. Stat. § 169A.53, subds. 1, 2 (2018).

With this procedural backdrop in mind, we turn to Pace's arguments.

I. Pace's rights under Minnesota Statutes § 169A.52 were not violated.

Pace contends that the revocation of his driver's license violated Minnesota Statutes § 169A.52 for three reasons: (1) the provided notice failed to advise him of his right to administrative and judicial review, (2) he was deprived of the full seven-day

temporary license, and (3) the officer did not immediately revoke his license at the time of his breath test. In appeals from implied-consent hearings, we do not set aside a district court's factual findings unless they are clearly erroneous. *Jasper v. Comm'r of Pub. Safety*, 642 N.W.2d 435, 440 (Minn. 2002). But we review questions of law, like the interpretation of a statute, de novo. *Thole v. Comm'r of Pub. Safety*, 831 N.W.2d 17, 19 (Minn. App. 2013), *review denied* (Minn. July 16, 2013).

Lack of Notice Regarding Judicial and Administrative Review

Pace first argues that the revocation of his driver's license violated Minnesota Statutes section 169A.52, subdivision six, because the notice of revocation he received did not contain required information about judicial or administrative review. In addressing requirements for notices of revocation, the statute states:

The notice *must* advise the person of the right to obtain administrative and judicial review as provided in section 169A.53 (administrative and judicial review of license revocation).

Minn. Stat. § 169A.52, subd. 6 (emphasis added). Based on the use of the word “must,” it is clear from the statutory language that a notice of revocation is required to include information about the right to seek judicial or administrative review of the license revocation.

The district court found that Pace was not given any information about how to reinstate his driving privileges or appeal the revocation. Nonetheless, the district court concluded that this defect did not cause the license revocation to be erroneous, noting that

the lack of notice about judicial and administrative review was not a “fatal defect” because Pace contacted an attorney and filed a timely petition for judicial review. We agree.

While Pace did not receive information about his right to judicial and administrative review as required by statute, he was not prejudiced by this lack of notice. Pace sought judicial review of the notice in a timely manner. Further, under the statute, Pace is still able to seek administrative review of the revocation of his driver’s license. See Minn. Stat. § 169A.53, subd. 1 (explaining that an individual may file for administrative review “at any time during the period of revocation”). Accordingly, although the commissioner failed to adequately notify Pace about his right to judicial and administrative review, Pace was not prejudiced by this defect and is not entitled to relief. See *LeClair v. Comm’r of Pub. Safety*, 416 N.W.2d 209, 212 (Minn. App. 1987) (holding that a driver was not prejudiced by a failure to provide him with notice of the right to review with an amended notice of revocation because the driver received an original notice of revocation containing information about his right to review, did in fact seek judicial review, and did not request a continuance).

Deprivation of Full Seven-Day Temporary License

Pace also argues that the revocation of his driver’s license violated the statute because he did not have a full seven days to use his temporary license.¹ But because Pace’s driver’s license was not immediately revoked—instead being revoked by mail—the statute

¹ The district court concluded that Pace was entitled to a seven-day temporary license—which he received—but not a seven-day notice of the license, which he did not. Accordingly, the district court concluded that this was not a basis to rescind the revocation of Pace’s driver’s license.

does not require a seven-day temporary license. Under the statute, when a police officer revokes an individual's driver's license at the time of a failed test, that officer is required to issue the driver a seven-day temporary license. Minn. Stat. § 169A.52, subd. 7(c)(2). But nothing in the statute extends this temporary license requirement to drivers who receive a notice of revocation by mail. See Minn. Stat. § 169A.52, subds. 4, 6. Further, this court has stated that, in cases where revocations are mailed, “[u]nlike an immediate revocation, there is no statutory provision either for a temporary license or for the revocation to become effective seven days after receipt of the notice.” *Williams v. Comm’r of Pub. Safety*, 830 N.W.2d 442, 445 (Minn. App. 2013), *review denied* (Minn. July 16, 2013). Additionally, a temporary license is provided in cases where a license is immediately revoked in order to provide individuals with a brief period of time to transition to revocation. That same time pressure is not present in cases where licenses are revoked by mail. Accordingly, because Pace’s driver’s license was revoked by mail, he was not entitled to a seven-day temporary license.

Pace contends that *Williams* is not controlling because that case dealt with individuals who submitted to urine testing rather than a breath test and were not subject to immediate revocation of their driver’s licenses. We are not persuaded. Although Pace was subject to immediate revocation of his driver’s license at the time that he agreed to take a breath test, the officer mistakenly did not revoke his license at that time. Once the officer failed to revoke Pace’s license at the time of the breath test, Pace was no longer subject to immediate revocation of his license, and his license was not revoked until nearly three months later. The fact that Pace was subject to immediate revocation, but his license was

not revoked until later, does not mean that he remains forever entitled to the same protections as an individual facing immediate revocation. *See Williams*, 830 N.W.2d at 445 (discussing the immediacy of revocation as a relevant consideration). Accordingly, we conclude that the commissioner did not violate Pace’s rights under the statute with respect to the seven-day temporary license.

Failure to Immediately Revoke License at the Time of the Breath Test

Finally, Pace maintains that the commissioner violated the statute by failing to immediately revoke his driver’s license at the time of the failed breath test. The district court concluded that while immediate revocation is generally required in the case of a failed breath test, nothing in the statute prohibits an officer from mailing a notice of revocation at a later time.²

Pace is correct that, in general, the statute requires an officer to immediately revoke the driver’s license of a person whose breath test reflects an alcohol concentration of 0.08 or more. Minn. Stat. § 169A.52, subd. 7(a) (“[A] peace officer . . . shall serve immediate notice of intention to revoke and of revocation . . . on a person who submits to a test the results of which indicate an alcohol concentration of 0.08 or more.”). But nothing in the statute prohibits an officer from mailing a notice of revocation at a later date in a situation where an officer mistakenly did not revoke a driver’s license at the time of the failed breath test. Further, as the commissioner notes, an interpretation of the statute concluding that an officer cannot subsequently revoke a driver’s license after mistakenly failing to revoke the

² Pace appears to assert that the district court did not address this contention, but the district court did so in its order regarding several post-hearing motions made by Pace.

license at the time of a failed breath test would be contrary to the intent of the legislature. See Minn. Stat. §§ 645.16 (noting that the purpose of statutory interpretation is to ascertain and effectuate the legislature’s intent); .17 (noting that the legislature does not intend “absurd” or “unreasonable” results) (2018).

Pace further suggests that our decision in *State v. Goharbawang*, 705 N.W.2d 198 (Minn. App. 2005), *review denied* (Minn. Jan. 17, 2006), established that immediate notice of revocation is required for a failed breath test. But in *Goharbawang*, the officer immediately provided the driver with the notice of intent to revoke his license, and we concluded that the revocation became effective “as soon as the police officer notifies the driver of the intention to revoke and of revocation.” 705 N.W.2d at 202. As such, nothing in *Goharbawang* controls whether an officer can or cannot later mail a notice of revocation if he does not immediately revoke a driver’s license at the time of a failed breath test.

Because the statute does not prevent an officer from later mailing a notice of revocation when he did not immediately revoke a driver’s license after a failed breath test, the commissioner did not violate the statute by mailing Pace the notice of revocation. As a result, we conclude that Pace’s statutory rights were vindicated and rescission of the revocation of his driver’s license is not warranted.

II. Pace’s procedural due process rights were not violated.

In addition to his statutory arguments, Pace also contends that the revocation of his driver’s license violated his procedural due process rights. Specifically, Pace contends that the notice’s failure to advise him of his right to judicial and administrative review and the fact that he was deprived of a full seven-day temporary license constitute violations of his

procedural due process rights. We review due process challenges de novo. *Thole*, 831 N.W.2d at 19.

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 driver's license "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), *review denied* (Minn. May 20, 2008). In the context of the implied-consent statute, the Minnesota Supreme Court has confirmed that "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)). And the paramount question in a procedural due process case is: "what level of prejudice has the driver suffered?" *Id.* With this construct in mind, we review each of Pace's arguments.

Lack of Notice of Judicial and Administrative Review

Pace argues that the failure to include information regarding judicial and administrative review with his notice of revocation violated his procedural due process rights. But in order to assert a due process claim, Pace must show that he "suffered a direct and personal harm resulting from the alleged denial of his constitutional rights." *Riehm*, 745 N.W.2d at 877 (quotation omitted). We agree with the district court that Pace did not suffer direct and personal harm from the failure to include information about the judicial and administrative review with the notice of revocation.

Although Pace did not receive information on the back of the notice of revocation regarding judicial and administrative review, Pace timely filed a petition for judicial review of his license revocation. And, as noted above, Pace can still seek administrative review of the revocation of his license. See Minn. Stat. § 169A.53, subd. 1 (explaining that an individual may file for administrative review “at any time during the period of revocation”). Accordingly, we conclude that Pace did not suffer any direct and personal harm from the failure to include information regarding judicial and administrative review with his notice of revocation.

Deprivation of Full Seven-Day Temporary License

Pace also contends that the deprivation of a full seven-day temporary license was a violation of his procedural due process rights. Again, Pace must demonstrate that he suffered “direct and personal harm” because of this alleged violation. *Riehm*, 745 N.W.2d at 877. The district court concluded that the less-than-seven-day notice of temporary driving privileges did not rise to the level of hardship to constitute a direct personal harm to Pace. We agree.

Caselaw clearly establishes that the loss of even one day’s worth of driving privileges that an individual may otherwise be entitled to constitutes harm sufficient to support a procedural due process claim. *Williams*, 830 N.W.2d at 445. But it is unclear how Pace lost any days of driving privileges that he was otherwise entitled to. Pace testified that he continued driving from the time of his failed breath test in February until his license was revoked in May. Thus, despite not knowing about the temporary driving privileges, Pace was able to drive—and did in fact do so—for the full seven-day period

that his temporary license was valid.³ Accordingly, we conclude that because Pace did not suffer a direct and personal harm, no procedural due process violation occurred.

Because the revocation of Pace's driver's license did not violate either the statute or procedural due process, we affirm the district court's decision sustaining the revocation of Pace's driver's license.

Affirmed.

³ Pace also testified he was harmed because he had to arrange rides to work, tell his boss about the situation, and miss after-work seminars based on his ride's availability and that it would have been easier if he had a full seven days of notice of the revocation. But Pace has failed to demonstrate how this hardship was a result of the alleged constitutional violation as opposed to hardship any individual faces when their license is revoked.