

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0899**

Brian Thomas Hughes,
Relator,

vs.

Minnesota Department of Public Safety,
Respondent.

**Filed January 10, 2022
Affirmed
Reilly, Judge**

Minnesota Department of Public Safety

Brian Thomas Hughes, Marine on St. Croix, Minnesota (pro se relator)

Keith Ellison, Attorney General, Leah M.P. Hedman, Assistant Attorney General, St. Paul,
Minnesota (for respondent)

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

NONPRECEDENTIAL OPINION

REILLY, Judge

In this certiorari appeal, relator seeks review of a decision by respondent agency to sustain the cancellation of relator's driving privileges subject to relator completing the ignition interlock program. We affirm.

FACTS

Relator Brian Thomas Hughes appeals a decision from the Minnesota Department of Public Safety (DPS) cancelling his driver's license as inimical to public safety and requiring him to participate in the ignition interlock program as a condition of license reinstatement.

Relator has several alcohol-related violations on his driving record, including impaired-driving offenses in October 2006, October 2009, and October 2015. In November 2015, DPS issued a notice of cancellation to relator informing him that his driving privileges were revoked as inimical to public safety because of incurring three alcohol-related driving incidents in ten years. Because relator's last alcohol-related violation occurred after July 1, 2011, the effective date of the ignition interlock program, DPS required relator to participate in the ignition interlock program as a condition to reinstating his driver's license.

In April 2021, DPS received a letter from relator requesting review of DPS's decision. Relator asserted that he was not subject to the ignition interlock requirement because it was applied retroactively. DPS completed an administrative review of relator's request in April 2021 and sustained its earlier decision.

This certiorari appeal follows.¹

¹ DPS challenges the timeliness of relator's petition. *See* Minn. Stat. § 606.01 (2020) (requiring relator to file petition for writ "within 60 days after the party applying for such writ shall have received due notice of the proceeding sought to be reviewed thereby"); *see also Christopher v. Windom Area Sch. Bd.*, 781 N.W.2d 904, 908 (Minn. App. 2010) (holding that "[a] party's failure to meet the time requirements of Minn. Stat. § 606.01 is a jurisdictional defect"), *rev. denied* (Minn. June 29, 2010). Here, it is not clear from the

DECISION

Minnesota law authorizes the commissioner of public safety to cancel the driving privileges of any person who is not entitled to a driver's license under Minn. Stat. § 171.04 (2020). *See* Minn. Stat. §§ 171.14(a)(4) (2020) (authorizing the commissioner to cancel driver's license upon determination that "the person, at the time of the cancellation, would not have been entitled to receive a license under section 171.04"); 171.04, subd. 1(10) (providing that the commissioner "shall not issue a driver's license . . . to any person when the commissioner has good cause to believe that the operation of a motor vehicle on the highways by the person would be inimical to public safety or welfare"). Upon reviewing the evidence, the commissioner shall sustain the withdrawal of a person's license if there is sufficient cause to believe that withdrawal is authorized by a rule or law. Minn. R. 7409.4600, subp. 4 (2019). Implied-consent cases, including driver's-license revocations such as this, are civil proceedings. *State v. Dumas*, 587 N.W.2d 299, 303 (Minn. App. 1998), *rev. denied* (Minn. Feb. 24, 1999). We apply the general certiorari statute to the quasi-judicial decisions of agencies absent other specific statutory review. *Dietz v. Dodge County*, 487 N.W.2d 237, 239 (Minn. 1992); Minn. Stat. § 606.01 (2020).

In November 2015, DPS revoked relator's driving privileges for incurring three qualified prior impaired driving incidents in ten years. Qualified prior impaired driving incidents are defined as "prior impaired driving convictions and prior impaired driving-related losses of license." Minn. Stat. § 169A.03, subd. 22 (2020). A prior impaired

record when relator received DPS's decision. That said, because we conclude that relator is not entitled to relief on the merits, we consider DPS's timeliness argument moot.

driving-related loss of license includes “a driver’s license suspension, revocation, cancellation, denial, or disqualification” under certain enumerated statutes, including section 169A.54, for impaired driving convictions and adjudications. Minn. Stat. § 169A.03, subd. 21(a)(1).

Relator does not challenge DPS’s decision to cancel his driver’s license in November 2015. Instead, relator argues that DPS erred by requiring him to participate in the ignition interlock program outlined in Minn. Stat. § 169A.55 (2020), as a condition to reinstating his driver’s license. An individual’s driving privileges may be reinstated under certain conditions. Minn. Stat. § 169A.55, subd. 2. Under subdivision 4,

(b) A person whose driver’s license has been canceled or denied as a result of three or more qualified impaired driving incidents shall not be eligible for reinstatement of driving privileges without an ignition interlock restriction until the person:

(1) has completed rehabilitation according to rules adopted by the commissioner or been granted a variance from the rules by the commissioner; and

(2) has submitted verification of abstinence from alcohol and controlled substances under paragraph (c), as evidenced by the person’s use of an ignition interlock device or other chemical monitoring device approved by the commissioner.

(c) The verification of abstinence must show that the person has abstained from the use of alcohol and controlled substances for a period of not less than:

(1) three years, for a person whose driver’s license was canceled or denied for an offense occurring within ten years of the first of two qualified prior impaired driving incidents, or occurring after three qualified prior impaired driving incidents[.]

Minn. Stat. § 169A.55, subd. 4(b)(1)-(2), (c)(1); *see also* Minn. Stat. §§ 171.09, subd. 1(g) (2020) (stating it is a misdemeanor for a person with a restricted license to operate a motor

vehicle that is not equipped with a functioning ignition interlock device); 171.306, subd. 4 (2020) (providing for ignition interlock program under specified circumstances); Minn. R. 7503.1725 (discussing ignition interlock program).

Resolving relator's argument requires us to interpret the requirements of the statute, and we review questions of statutory interpretation de novo. *Gray v. Comm'r of Pub. Safety*, 918 N.W.2d 220, 223 (Minn. App. 2018). "The objective of statutory interpretation is to ascertain and effectuate the Legislature's intent." *State v. Haywood*, 886 N.W.2d 485, 488 (Minn. 2016) (quotation omitted). "If the Legislature's intent is clear from the statute's plain and unambiguous language, then [a court] interpret[s] the statute according to its plain meaning" without engaging in further construction. *Id.* Here, it is uncontested that relator incurred three qualified prior impaired driving offenses within a ten-year period. The plain language of the statute requires relator to participate in the ignition interlock program as a condition to license reinstatement.

Relator does not argue that the statute is ambiguous or subject to a different interpretation. Instead, relator argues that application of the ignition interlock requirement violates both the United States and Minnesota Constitutions' prohibitions against ex post facto laws. *See* U.S. Const. art. I, § 10; Minn. Const. art. I, § 11. "The ex post facto prohibition forbids the Congress and the States to enact any law which imposes a punishment for an act which was not punishable at the time it was committed; or imposes additional punishment to that then prescribed." *Weaver v. Graham*, 450 U.S. 24, 28 (1981) (quotation omitted). Additionally, "[n]o law shall be construed to be retroactive unless clearly and manifestly so intended by the legislature." Minn. Stat. § 645.21 (2020). To

have retroactive effect, a statutory provision must contain clear evidence of retroactive intent, “such as mention of the word ‘retroactive.’” *State v. Basal*, 763 N.W.2d 328, 335 (Minn. App. 2009) (citation omitted). We review this issue de novo. *Id.* (“The retroactivity of a statute is a matter of statutory interpretation, which we review de novo.”).

To qualify as an ex post facto law, a statute must be criminal or penal in nature, rather than civil or regulatory. *Rew v. Bergstrom*, 845 N.W.2d 764, 790 (Minn. 2014) (setting forth analysis to determine whether ex post facto prohibition applies to civil-regulatory laws). Implied-consent cases, including driver’s-license revocations such as this, are civil proceedings. *Anderson v. Comm’r of Pub. Safety*, 878 N.W.2d 926, 928 (Minn. App. 2016). Thus, it is not clear that the ignition interlock requirement is clearly within the punitive laws to which the ex post facto laws apply. Even so, for purposes of this appeal, we assume without deciding that the ignition interlock requirement would qualify as a punishment under applicable law.

Relator notes that section 169A.55 was enacted in 2011, after he acquired his first two impaired-driving offenses in 2006 and 2009. Thus, relator argues that the ignition interlock requirement cannot apply to his pre-2011 offenses. We do not agree. DPS imposed the ignition interlock requirement as a direct result of relator’s impaired-driving offense in 2015, and the subsequent cancellation of his driver’s license for incurring three impaired-driving incidents in ten years. DPS did not cancel relator’s license or require him to participate in the ignition interlock program, until 2015. And section 169A.55 was in effect when DPS cancelled relator’s driving privileges in 2015. DPS did not apply the ignition interlock requirement retroactively.

It is also well established that “a statute that provides for enhanced penalties for a repeat offender does not punish the old offense; rather it stiffens the penalty for the latest crime.” *Dumas*, 587 N.W.2d at 304 (citing *Nichols v. United States*, 511 U.S. 738, 747 (1994) (noting that enhancement statutes do not change penalty for earlier convictions)). In *Dumas*, the defendant’s license was revoked in 1995. *Id.* at 300. In 1998, the state charged defendant with impaired driving and refusing to take a sobriety test. *Id.* Because the defendant’s license was revoked within five years of his latest offenses, the impaired-driving and test-refusal offenses were enhanced from misdemeanors to gross misdemeanors. *Id.* The defendant argued that the enhancement violated the ex-post-facto clauses of the Minnesota and United States constitutions because his license revocation occurred before the enactment of the statute. *Id.* at 301. The district court agreed with the defendant. *Id.* But on appeal, we reversed the district court’s decision and concluded that the statutory provision enhancing the defendant’s crimes did not violate the prohibitions on ex-post-facto laws. *Id.* at 304-05. Similarly, in *State v. Willis*, the Minnesota Supreme Court held that a sentence enhancement on an impaired-driving offense did not punish the past crime, but instead “increased the possible penalty for the latest crime.” 332 N.W.2d 180, 185 (Minn. 1983). The supreme court reasoned that “[m]erely allowing a conviction obtained before the amendment to be used in the assessment of the penalty for a subsequent offense does not violate the constitution.” *Id.*; see also *State v. Findling*, 144 N.W. 142, 143 (Minn. 1913) (explaining that increased punishment for subsequent offense is not a punishment for the first offense a second time, but a more severe punishment for the second offense).

While this case does not involve the typical ex-post-facto issue as addressed in *Dumas*, *Willis*, and *Findling*, those cases are still instructive. Given our caselaw, we determine that the ignition interlock requirement increased the penalty for relator's latest offense in 2015. Rather than punishing relator's past impaired-driving offenses in 2006 and 2009, it merely "stiffen[ed] the penalty" for the 2015 offense. *Dumas*, 587 N.W.2d at 304. Thus, we determine that DPS did not err by applying the ignition interlock requirement in Minn. Stat. § 169A.55, subd. 4, to relator after his driver's license was cancelled as inimical to public safety.

Affirmed.