

*This opinion is nonprecedential except as provided by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
A25-0720**

State of Minnesota,
Respondent,

vs.

Zachary Ray Terrill,
Appellant.

**Filed February 17, 2026
Reversed and remanded
Schmidt, Judge**

Beltrami County District Court
File No. 04-CR-24-3005

Keith Ellison, Attorney General, St. Paul, Minnesota; and

David Hanson, Beltrami County Attorney, Bemidji, Minnesota (for respondent)

Daniel P. Repka, Repka Law, LLC, St. Paul, Minnesota (for appellant)

Considered and decided by Bentley, Presiding Judge; Bratvold, Judge; and Schmidt,
Judge.

NONPRECEDENTIAL OPINION

SCHMIDT, Judge

A driving-while-impaired (DWI) charge may be enhanced to a first-degree offense when a driver “commits the violation within ten years of the first of three or more qualified prior impaired driving incidents.” Minn. Stat. § 169A.24, subd. 1(1) (2024). Appellant Zachary Ray Terrill argues that the district court erred in convicting him of the enhanced

first-degree DWI offense because respondent State of Minnesota failed to present sufficient evidence to prove that he had three qualified driving incidents in the ten years preceding the underlying offense. We reverse and remand.

FACTS

In December 2024, a law-enforcement officer stopped Terrill’s vehicle and arrested him on suspicion of DWI. Terrill’s breath test revealed that his alcohol concentration of 0.15 exceeded the legal limit. The state charged Terrill with first-degree DWI based on three alleged qualified prior impaired driving incidents on his driving record:

- (1) a fourth-degree DWI conviction (October 2020);
- (2) a third-degree DWI conviction (September 2021); and
- (3) the revocation of his license under the implied-consent law based on a second-degree DWI charge (October 2024).

After the state charged Terrill with first-degree DWI, he filed a petition for judicial review of the October 2024 license revocation.

The district court presided over a stipulated-evidence trial on Terrill’s first-degree DWI charge. The district court concluded that Terrill “had three or more qualified prior impaired driving incidents within ten years”—one being his October 2024 license revocation—and found him guilty of first-degree DWI. At the time the court found Terrill guilty, his October 2024 license revocation had not been judicially reviewed.

Terrill appeals.

DECISION

Terrill argues that the state failed to present sufficient evidence to prove beyond a reasonable doubt that he had three qualified prior impaired driving incidents within the preceding ten years. He contends that his October 2024 implied-consent license revocation is not a qualified prior impaired driving incident because it had not been judicially reviewed when he was found guilty of first-degree DWI.¹ We agree.

The question of whether Terrill’s license revocation is a qualified prior impaired driving incident is a legal question, which we review de novo. *State v. Anderson*, 941 N.W.2d 724, 727 (Minn. 2020). A “[q]ualified prior impaired driving incident” is defined as “includ[ing] prior impaired driving convictions and prior impaired driving-related losses of license.” Minn. Stat. § 169A.03, subd. 22 (2024). “Prior impaired driving-related loss of license” includes a license revocation under the implied-consent law (Minn. Stat. §§ 169A.50-.53 (2024)), but only when “judicial review has already occurred or been waived.” Minn. Stat. § 169A.03, subd. 21(a)(1) (2024); *State v. Wiltgen*, 737 N.W.2d 561, 571 (Minn. 2007) (holding that an implied-consent license revocation that has not been judicially reviewed cannot be used to enhance a DWI offense).

The district court found that Terrill had three prior impaired driving incidents that qualified to enhance his current offense to a first-degree DWI. The third qualified incident that the district court relied upon was the October 2024 revocation of Terrill’s license under the implied-consent law. But Terrill filed a petition for judicial review of the revocation,

¹ The state filed a letter in this appeal, but no brief. When a “respondent fails or neglects to serve and file [a] brief,” we decide the case on the merits. Minn. R. Civ. App. P. 142.03.

which was still pending at the time the district court enhanced Terrill’s offense in this case. Because a court had not ruled on Terrill’s petition for judicial review, the district court erred in relying on the October 2024 revocation as a qualified prior impaired driving incident. *Wiltgen*, 737 N.W.2d at 570-71. This leaves only two qualified prior impaired driving incidents, which Terrill does not challenge on appeal.

Accordingly, we conclude that the state failed to present sufficient evidence to prove beyond a reasonable doubt that Terrill had three qualified prior impaired driving incidents within the preceding ten years. Minn. Stat. § 169A.24, subd. 1(1). We, therefore, reverse Terrill’s conviction for first-degree DWI and remand for the district court to adjudicate him guilty of second-degree DWI and to resentence him accordingly. *See* Minn. Stat. § 169A.25, subd. 1(a) (2024) (“A person who violates section 169A.20, subdivision 1 (driving while impaired crime), is guilty of second-degree driving while impaired if two or more aggravating factors were present when the violation was committed.”). *See also* Minn. R. Crim. P. 28.02, subd. 12(c) (“If the appellate court . . . reverses the judgment, it must direct: . . . (c) reduction of the conviction to a lesser included offense or to an offense of lesser degree, as the case may require. If the [appellate] court directs a reduction of the conviction, it must remand for resentencing.”).

Reversed and remanded.