

IN THE SUPREME COURT OF IOWA

No. 16-0894

Boone County Number OWCR110290

STATE OF IOWA,

Plaintiff-Appellee,

vs.

DESHAUN WILLIAMS

Defendant-Appellant

APPLICATION TO IOWA SUPREME COURT FOR FURTHER REVIEW

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QUESTION PRESENTED FOR REVIEW

Did the Trial Court err in overruling the Appellant's Motion for a Directed Verdict as to the Driving While Barred Charge?

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STATEMENT SUPPORTING FURTHER REVIEW

The appellant contends this case warrants further review as the decision overrules four prior decisions of the Iowa Court of Appeals and distinguishes, or overrules, *State v. Green*, 722 N.W.2d 650, 652 (Iowa 2006). The decision eliminates the requirement for the State of Iowa to offer proof that the Iowa Department of Transportation mailed a notice of barment to the defendant at his last known address. As the dissent points out, the courts and the Iowa Department of Transportation have viewed the proof of mailing requirement as settled law.

BRIEF

DID THE TRIAL COURT ERR IN OVERRULING THE APPELLANT'S MOTION FOR A DIRECTED VERDICT AS TO THE DRIVING WHILE BARRED CHARGE?

Mr. Williams argues the requirement to prove mailing of the notice of barment to his last known address is required before he can be convicted for driving while barred. As the dissent has pointed out, there are four recent opinions which have consistently held the failure to provide proof of mailing, of the notice, to the Defendant, at his or her last known address, was fatal to a conviction. The dissent addresses the issue as follows:

“[T]he State was required to offer evidence that the DOT actually mailed the notice of the barred status to [the defendant’s] last known address.” *State v. Johns*, No. 14-1435, 2015 WL 4935703, at *1 (Iowa Ct. App. Aug. 19, 2015); see also *State v. Williams*, No. 15-0755, 2017 WL 1735607, at *1 Ct. App. May 3, 2017); *State v. Anderson*, No. 10-1945, 2012 WL 3200864, at *1 (Iowa Ct. App. Aug. 8, 2012); *State v. Campbell*, No. 08-0106, 2008 WL 5412325, at *1 (Iowa Ct. App. Dec. 31, 2008). In each opinion, by four different authors, reliance was placed on the supreme court’s opinion in *Green*.

The dissent further points out that the caselaw precedent is sufficient to reverse the conviction, but there are additional reasons to reverse the conviction for failure to provide proof of mailing of the notice of barment:

1. The notice of barment notifies the driver of the effective date of the barment and is a condition precedent to the bar taking effect. The provision requiring proof of mailing is the same regardless of the status being denied, suspended, revoked or barred. Iowa Admin. Code r. 761-615.37(1 and 2). *Green* is therefore indistinguishable.

2. After 1995, the Iowa Department of Transportation was authorized to bar a driver's license without the need to get a court order. As part of that change, the proof of mailing requirement took on additional significance as it was the only way to show the driver's right to be notified had been complied with by the Department of Transportation. Previously, the driver would have been issued notice and an opportunity to be heard in open court. Once the court was eliminated from the process, mailing of the final action was the only due process provided to the driver.

3. The Administrative Procedures Act requires notice of a final agency action. 17A.12(1). The notice can be served, sent by certified mail or the agency may determine another appropriate means for delivery of the notice of final agency action. Delivery of notice triggers other rights and obligations with

regard to future action including beginning the time in which to file an appeal of an adverse administrative action.

4. Iowa Code Section 321.556(4) requires the DOT to issue an order of barment specifying the reason for the bar and duration of it. There is a duty by the agency to issue the order. Once issued, it notifies the driver of his status and triggers a deadline in which to appeal. Failure to issue the order would mean the time to appeal or otherwise challenge the agency decision had not yet begun to run. The final agency action, for purposes of the order taking effect and for the right appeal is established by the return receipt for the order of barment or the affidavit indicating that it was mailed to the last known address.

5. The cases cited in the majority and by the State of Iowa fail to show one case where the issue of proper notice by mailing was preserved and the Iowa Court of Appeals or the Supreme Court of Iowa have upheld a conviction. Proof of mailing is required. The result in this case is a sharp departure from what was previously accepted as settled law.

Neither Mr. Williams nor the dissent claims there is an additional element of the offense of driving while barred. The point which both have strived to make is that in order for there to be a proper barment of the driver's license, the driver must have been provided notice. If the mailing was not completed, the barment cannot be proven. The dissent offers a potential jury instruction which makes the requirement of mailing, clear. In order to prove the driver was barred, the State must offer proof of mailing of the notice to the driver at his or her last known address.

CONCLUSION

For the reasons stated above, the appellant respectfully requests the Court to grant further review of this matter, and upon further review reverse the decision of the Iowa Court of Appeals and the ruling of the District Court and remand with instructions to dismiss.

REQUEST FOR ORAL ARGUMENT

If the Supreme Court of Iowa grants further review, Mr. Williams respectfully requests to be heard in oral argument.

Respectfully Submitted,

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