

IN THE COURT OF APPEALS OF IOWA

No. 2-205 / 11-1220
Filed April 25, 2012

STATE OF IOWA,
Plaintiff-Appellant,

vs.

MYRON JAVON RICHARDSON-RIVERS,
Defendant-Appellee.

Appeal from the Iowa District Court for Johnson County, Karen D. Egerton, Magistrate.

The State appeals the district court's dismissal of the criminal complaint filed against Myron Richardson-Rivers for possession of alcohol under the legal age. **AFFIRMED.**

Thomas J. Miller, Attorney General, Kyle Hanson, Assistant Attorney General, Janet M. Lyness, County Attorney, Emily Voss, Assistant County Attorney, and Bryce Carlson, Intern, for appellant.

Myron Javon Richardson-Rivers, Iowa City, pro se.

Considered by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

MULLINS, J.

On discretionary review, the State challenges the district court's dismissal of the criminal complaint filed against Myron Richardson-Rivers for possession of alcohol under the legal age. For the reasons stated below, we affirm.

I. BACKGROUND AND PROCEEDINGS.

On December 21, 2010, Richardson-Rivers took two bottles of alcohol from a local grocery store. He was stopped outside the store by store employees, and the alcohol was recovered. At the time of the offense, Richardson-Rivers was seventeen years old. The State charged Richardson-Rivers with possession of alcohol under the legal age, in violation of Iowa Code section 123.47 (2011) on June 1, 2011, after he had turned eighteen.

An initial appearance was scheduled for June 23, 2011, but Richardson-Rivers did not appear. The next day the court, on its own motion, set the case for a dismissal hearing. The State filed a written resistance to the dismissal and also appeared at the hearing; Richardson-Rivers again did not appear. On July 25, 2011, the district court dismissed the charges finding because there was no legislative punishment for a violation of section 123.47(2) if the violator was under the age of eighteen, the charge does not qualify as a public offense, and therefore, the case must be dismissed. The State filed an application for discretionary review with the supreme court, which was granted. The case was subsequently transferred to this court for consideration.

II. SCOPE OF REVIEW.

We review questions of statutory construction for correction of errors at law. *Dykstra v. Iowa Dist. Ct.*, 783 N.W.2d 473, 477 (Iowa 2010).

III. IOWA CODE SECTION 123.47.

When interpreting a statute, our goal is to ascertain the intent of the legislature. *Estate of Ryan v. Heritage Trails Assocs., Inc.*, 745 N.W.2d 724, 730 (Iowa 2008). The intent can be garnered from the language used by the legislature. *State v. Wiederien*, 709 N.W.2d 538, 541 (Iowa 2006). When the language is plain and its meaning is clear, we will not search for meaning beyond the statute's express terms. *State v. Snyder*, 634 N.W.2d 613, 615 (Iowa 2001). "When more than one statute is relevant, we consider the statutes together and try to harmonize them." *Id.*

The statute in question in this case is Iowa Code section 123.47. Subsection two provides in relevant part: "A person or persons under legal age^[1] shall not purchase or attempt to purchase, or individually or jointly have alcoholic liquor, wine, or beer in their possession or control." Iowa Code § 123.47(2). Subsection three provides a spectrum of penalties for violating subsection two:

3. a. A person who is eighteen, nineteen, or twenty years of age, other than a licensee or permittee, who violates this section regarding the purchase of or attempt to purchase alcoholic liquor, wine, or beer, or possessing or having control of alcoholic liquor, wine, or beer, commits the following:

(1) A simple misdemeanor punishable as a scheduled violation under section 805.8C, subsection 7.

(2) A second offense shall be a simple misdemeanor punishable by a fine of five hundred dollars. In addition to

¹ "Legal age" is defined in the statute as "twenty-one years of age or more." Iowa Code § 123.3(19).

any other applicable penalty, the person in violation of this section shall choose between either completing a substance abuse evaluation or the suspension of the person's motor vehicle operating privileges for a period not to exceed one year.

(3) A third or subsequent offense shall be a simple misdemeanor punishable by a fine of five hundred dollars and the suspension of the person's motor vehicle operating privileges for a period not to exceed one year.

b. The court may, in its discretion, order the person who is under legal age to perform community service work under section 909.3A, of an equivalent value to the fine imposed under this section.

c. If the person who commits a violation of this section is under the age of eighteen, the matter shall be disposed of in the manner provided in chapter 232.

Iowa Code § 123.47(3). Richardson-Rivers was seventeen when the offense occurred but eighteen when the charges were filed. The question is what would be his penalty if he were found guilty. The State agrees the statute does not provide for a specific penalty for those under eighteen, and thus argues we must look to the catchall penalty provision in Iowa Code section 123.90, which provides in relevant part:

Unless other penalties are herein provided, any person, except a person under legal age, who violates any of the provisions of this chapter, . . . shall be guilty of a serious misdemeanor. Any person under legal age who violates any of the provisions of this chapter shall upon conviction be guilty of a simple misdemeanor.

Based on this code section, the State contends it is proper to charge Richardson-Rivers with a simple misdemeanor. The district court disagreed and so do we.

The problem with the State's argument is that section 123.47(3) is a specific statute that does provide a penalty for those who are under eighteen when the offense is committed. The penalty for the matter is to be disposed of in the manner provided in chapter 232, the juvenile justice chapter. Because a

penalty was provided, section 123.90, the general statute, is inapplicable. See Iowa Code § 123.90 (“Unless other penalties are herein provided, . . .”).

Based on the express terms of the statute, we find the legislature intended those who violate the statute who are under the age of eighteen to be handled in juvenile court, not district court.² As the criminal complaint here was brought in district court, the action had to be dismissed because the district court did not have authority to impose the prescribed penalty on the offender.³ Only the juvenile court had jurisdiction over this violation. Iowa Code § 232.8 (“The juvenile court . . . has exclusive jurisdiction in proceedings concerning an adult who is alleged to have committed a delinquent act prior to having become an adult, and who has been transferred to the jurisdiction of the juvenile court pursuant to an order under section 803.5.”). We therefore affirm the district court’s dismissal of the criminal complaint.

AFFIRMED.

² In 2010 the legislature amended the language of section 123.47(3)(a) which had previously provided:

A person who is under legal age, other than a licensee or permittee, who violated this section regarding the purchase of or attempt to purchase alcoholic liquor, wine, or beer, or possessing or having control of alcoholic liquor, wine, or beer commits the following.

The 2010 amendment removed “under legal age” and instead replaced it with “eighteen, nineteen, or twenty years of age.” We believe this change made the intent of the legislature clear that those who are eighteen, nineteen, and twenty are to be charged with simple misdemeanors, where those under the age of eighteen should be handled in juvenile court under chapter 232. *Snyder*, 634 N.W.2d at 615 (“When the legislature amends a statute, a presumption arises that it intended to change it.”).

³ We note under Iowa Code section 803.5 a case brought against an adult who is alleged to have committed the offense prior to reaching the age of eighteen can be transferred to juvenile court. However, before the case can be transferred, either the county attorney or defendant must make a motion to transfer the jurisdiction. Iowa Code § 803.5(2). No such motion was ever filed in this case, and thus, the district court had no choice but to dismiss.