

IN THE COURT OF APPEALS OF IOWA

No. 2-365 / 11-1221
Filed May 23, 2012

STATE OF IOWA,
Plaintiff-Appellant,

vs.

DAVID JOHN WHITACRE,
Defendant-Appellee.

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

The State challenges the district court's dismissal of a criminal complaint charging David Whitacre with possession of alcohol under the legal age.

AFFIRMED.

Thomas J. Miller, Attorney General, Kyle P. Hanson, Assistant Attorney General, Janet M. Lyness, County Attorney, Meredith Rich-Chappell and Emily Voss, Assistant County Attorneys, and Bryce Carlson, Legal Student Intern, for appellant.

David J. Whitacre, Kalona, appellee pro se.

Considered by Eisenhauer, C.J., and Potterfield and Mullins, JJ.

POTTERFIELD, J.

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

I. BACKGROUND AND PROCEEDINGS.

On March 12, 2011, David Whitacre and others took a bottle of alcoholic liquor 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, Whitacre was seventeen years old. On June 1, 2011, after he had turned eighteen, the State charged Whitacre with possession of alcohol under the legal age in violation of Iowa Code section 123.47 (2011).

An initial appearance was scheduled for June 23, 2011, but Whitacre 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. Whitacre again did not appear at the hearing. On July 25, 2011, the court dismissed the charges finding that 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. Our supreme court granted the State's petition for discretionary review and transferred the case to this court.

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. *State v. Soboroff*, 798 N.W.2d 1, 5 (Iowa 2011). In determining legislative intent, we look to the language of the statute. *Id.* 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 age¹ 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:

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 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.

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

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).

Whitacre was seventeen when the offense occurred, but eighteen when the charges were filed. The question is whether he can be prosecuted under chapter 123 or whether the charges would have to be filed in juvenile court under chapter 232. The State argues it was proper to prosecute Whitacre under chapter 123, and that, since the statute does not provide for a specific penalty for those under eighteen, we may 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 Whitacre with a simple misdemeanor. The magistrate disagreed, as do we.

As noted above, section 123.47(3)(c) provides that “[i]f 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 section 232.8 states that

[t]he juvenile court has *exclusive original jurisdiction* in proceedings concerning a child who is alleged to have committed a delinquent act unless otherwise provided by law, and has *exclusive original jurisdiction* in proceedings concerning an adult who is alleged to

have committed a delinquent act prior to having become an adult

.....

Iowa Code § 232.8(1)(a) (emphasis added). See *generally id.* § 232.2(12)(a) (defining a “delinquent act” as “[t]he violation of any state law or local ordinance which would constitute a public offense if committed by an adult except any offense which by law is exempted from the jurisdiction of this chapter.”). Violations of some provisions of the code are specifically excluded from the jurisdiction of the juvenile court. See, e.g., *id.* § 232.8(1)(b) (“Violations by a child of provisions of chapter 321, 321G, 321I, 453A, 461A, 461B, 462A, 481A, 481B, 483A, 484A, or 484B, which would be simple misdemeanors if committed by an adult, and violations by a child of county or municipal curfew or traffic ordinances, are excluded from the jurisdiction of the juvenile court and shall be prosecuted as simple misdemeanors as provided by law.”), (c) (“Violations by a child, aged sixteen or older, which subject the child to the provisions of section 124.401, subsection 1, paragraph “e” or “f”, or violations of section 723A.2 which involve a violation of chapter 724, or violation of chapter 724 which constitutes a felony, or violations which constitute a forcible felony are excluded from the jurisdiction of the juvenile court and shall be prosecuted as otherwise provided by law unless the court transfers jurisdiction of the child to the juvenile court upon motion and for good cause.”). Section 123.47 is *not*, however, excluded from the jurisdiction of the juvenile court. Compare *State v. Emery*, 636 N.W.2d 116, 119–20 (Iowa 2001) (discussing distinction between jurisdiction and authority and finding question presented was one of the authority of the district court as the case involved a child charged with offense excluded from the jurisdiction of the

juvenile court). Consequently, only the juvenile court had jurisdiction over this violation. See Iowa Code § 232.8(1)(a) (“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.”);² *State v. Edgington*, 601 N.W.2d 31, 32–33 (Iowa 1999).

Based on the express terms of the statute, we find the legislature intended juvenile court, not district court, to handle cases of persons under the age of eighteen charged with violating the statute.³ As the criminal complaint here was brought in district court, the action had to be dismissed because the district court did not have jurisdiction or authority to impose the prescribed penalty on the offender. We therefore affirm the dismissal of the criminal complaint.

AFFIRMED.

² 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.

³ 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, but 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.”).