

**IN THE COURT OF APPEALS OF IOWA**

No. 6-981 / 05-1868  
Filed January 18, 2007

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**JOANN MINNIE KAMBER,**  
Defendant-Appellant.

---

Appeal from the Iowa District Court for Polk County, Artis Reis (plea) and John D. Lloyd (sentencing), Judges.

Defendant appeals from the district court determination she was ineligible for a deferred judgment under Iowa Code section 907.3(1)(c) (2005) because she had two prior deferred sentences. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Nan Jennisch and Dennis D. Hendrickson, Assistant State Appellate Defenders, for appellant.

Thomas J. Miller, Attorney General, Martha E. Boesen, Assistant Attorney General, John P. Sarcone, County Attorney, and John Judisch, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Zimmer and Eisenhauer, JJ.

**SACKETT, C.J.**

Defendant, Joann Minnie Kamber appeals, contending the district court erred in determining she was ineligible for a deferred judgment under Iowa Code section 907.3(1)(c) (2005) because she had two prior deferred sentences. We affirm.

**Background Facts and Proceedings**

Defendant stole over \$2500 in merchandise from two Des Moines businesses and was charged with one count of second-degree theft, in violation of Iowa Code sections 714.1 and 714.2(2), and one count of third-degree theft, in violation of sections 714.1 and 714.2(3) (2005). The second count was enhanced because defendant had been convicted of fifth-degree theft in 1998 and 2000.

Defendant made a plea agreement with the State and agreed to enter guilty pleas to second-degree theft, in violation of sections 714.1 and 714.2(2), in exchange for the State dismissing the other count.

At the time the plea was entered the State informed the court its intention was to recommend a suspended sentence. The defendant requested a deferred judgment. The court accepted the defendant's plea. Before sentencing the court considered the sentencing recommendations of the State and the defendant. The State again resisted the defendant's request for a deferred judgment noting she had received two prior deferred sentences.

The district court determined defendant was not eligible for a deferred judgment because prior to the commission of the offense at issue she had been granted "deferred judgments or similar relief two or more times." The court determined that under Iowa Code section 907.3(1)(c), this made her ineligible for a deferred judgment.

The court sentenced the defendant to an indeterminate term of incarceration not to exceed five years, suspended the period of incarceration, and put defendant on supervised probation for two years, as well as imposing a fine and costs.

Defendant contends the district court erred in concluding she was not eligible for a deferred judgment because it was prohibited by Iowa Code section 907.3(1)(c). The State concedes that error was preserved on this issue and contends the district court properly interpreted the relevant code section and we should affirm.

### **Standard of Review.**

“Statutory construction is properly invoked when a statute contains such ambiguities or obscurities that reasonable minds may disagree or be uncertain of its meaning.” *State v. Blood*, 360 N.W.2d 820, 822 (Iowa 1985) (citing *Janson v. Fulton*, 162 N.W.2d 438, 443 (Iowa 1968)). “The fundamental rule of statutory construction is to ascertain and, if possible, give effect to the intention or purpose of the legislature as expressed in the statute.” *Id.* (quoting *Hedges v. Conder*, 166 N.W.2d 844, 852 (Iowa 1969)).

We review the interpretation of a statute by the district court for correction of errors at law. *State v. Iowa Dist. Ct.*, 620 N.W.2d 271, 272-73 (Iowa 2000). The court is not bound by the district court’s interpretation. *Id.*

### **Analysis.**

Iowa Code section 901.5(1) provides that in pronouncing judgment and sentence the court may, if authorized by section 907.3, defer the judgment and sentence for an indefinite period in accordance with chapter 907.

Iowa Code section 907.3 provides in relevant part:

Pursuant to section 901.5, the trial court may, upon a plea of guilty . . . exercise any of the options contained in this section. . . .

1. With the consent of the defendant, the court may defer judgment . . . .

However, this subsection shall not apply if any of the following is true:

. . . .  
 (c) Prior to the commission of the offense the defendant had been granted a deferred judgment *or similar relief, two or more times* anywhere in the United States.

(Emphasis supplied).

Does a deferred sentence provide “similar relief” to that granted in a deferred judgment within the meaning of the statute so as to preclude defendant from receiving a deferred judgment?

Both terms are defined in Iowa Code section 907.1, which provides:

As used in this chapter, unless the context otherwise requires:

1. “*Deferred judgment*” means a sentencing option whereby both the adjudication of guilt and the imposition of sentence are deferred by the court. The court retains the power to pronounce judgment and impose a sentence subject to the defendant’s compliance with conditions set by the court as a requirement of the deferred judgment.
2. “*Deferred sentence*” means a sentencing option whereby the court enters an adjudication of guilt but does not impose a sentence. The court retains the power to sentence the defendant to any sentence it originally could have imposed subject to the defendant’s compliance with conditions set by the court as a requirement of the deferred sentence.

The primary distinction between a deferred sentence and a deferred judgment is that with a deferred sentence the court pronounces judgment but defers imposition of a sentence, while with a deferred judgment the court defers judgment of both the finding of guilt and the imposition of sentence. In addition, on the defendant’s discharge from a deferred judgment the criminal record is expunged. See Iowa Code § 907.9(4).

The legislature did not define the term “similar relief.” Consequently, our task is to provide an interpretation. *State v. Simmons*, 500 N.W.2d 58, 59 (Iowa 1993).

Certain principles guide us in this task. *Id.* Words of a statute are given their plain or ordinary meaning, absent legislative definition or particular and appropriate meaning in the law. *American Asbestos Training Ctr., Ltd. v. Eastern Iowa Cmty. Col.*, 463 N.W.2d 56, 58 (Iowa 1990). Consulting a dictionary is an acceptable method of ascertaining the meaning of words in a statute. See *State v. Williams*, 315 N.W.2d 45, 49 (Iowa 1982).

The word “similar” is defined as “having characteristics in common: very much alike” or “alike in substance or essentials.” Webster’s Third New International Dictionary 2120 (2002).

Looking at the statutory definitions of deferred sentence and deferred judgment we find them, though not the same, to be *similar*. In both cases a sentence is not imposed, but the trial court retains the power to impose a sentence it could have originally imposed.

When construing a statute, we look at the object sought to be accomplished and the evils and mischief sought to be remedied to arrive at an interpretation that will accomplish the intended purpose rather than one which will defeat it. *State v. Moore*, 569 N.W.2d 130, 132 (Iowa 1997); *Thompson v. State*, 524 N.W.2d 160, 162 (Iowa 1994). Looking at section 907.3 in its entirety, it appears that generally the legislature intended that deferred judgments would not be available to those who have engaged in prior criminal conduct. In saying this, we note that the subsection “shall not apply if any of the following is true:”

The defendant previously has been convicted of a felony.

. . . .

Prior to the commission of the offense the defendant had been granted a deferred judgment or similar relief in a felony prosecution.

. . . .

The offense is a violation of section 321J.2 and the person has been convicted of a violation of that section or the person's driver's license has been revoked.

.....  
If the defendant has previously been convicted of a violation of section 321J.2 subsection 1.

If the defendant has previously received a deferred judgment or sentence for violation of section 321J.2, subsection 1.

Iowa Code §§ 907.3(b), (d), and (g).

Furthermore, when deferred sentences and deferred judgments are allowed by statutes they have been treated similarly in several ways. Neither a deferred judgment nor a deferred sentence may be used to enhance punishment when a later offense is charged, as long as the sentence is not in violation of section 321J.2. *State v. Simons*, 500 N.W.2d 58, 60 (Iowa 1993). We affirm.

**AFFIRMED.**