

IN THE COURT OF APPEALS OF IOWA

No. 7-505 / 07-0089
Filed September 19, 2007

KURT ROBERT HEINEMANN,
Petitioner-Appellant,

vs.

**IOWA DEPARTMENT OF TRANSPORTATION,
MOTOR VEHICLE DIVISION,**
Respondent-Appellee.

Appeal from the Iowa District Court for Woodbury County, Mary Jane Sokolovske, Judge.

Kurt Heinemann appeals the decision classifying him as a habitual offender and barring him from driving for one year. **AFFIRMED.**

Jeremy Cross of Heidman, Redmond, Fredregill, Patterson, Plaza, Dykstra & Pahl, Sioux City, for appellant.

Thomas J. Miller, Attorney General, and Carolyn Olson, Assistant Attorney General, Ames, for appellee.

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

EISENHAUER, J.

The Iowa Department of Transportation (DOT) found Kurt Heinemann to be a habitual offender and barred him from driving for one year. The district court affirmed and Heinemann appeals. We affirm.

I. BACKGROUND FACTS AND PROCEEDINGS.

At the administrative hearing to determine whether Heinemann was a habitual offender, the DOT abstract showed Heinemann had been convicted of six traffic violations in two years. See Iowa Code § 321.555(2) (2005). Heinemann argued his conviction for no driver's license should not count as one of the six violations because he pled guilty only after he had been assured by the trial judge the offense was not a moving violation.

On March 31, 2006, the administrative law judge (ALJ) ruled that under Iowa's habitual offender statutes he had no discretion to grant leniency after Heinemann was correctly identified as a habitual offender. "As a matter of law, probation, credit, or consideration due to mitigating circumstance are not issues to be considered by the judge in this habitual offender proceeding." See *id.* § 321.556(1), (3), (4). The ALJ found Heinemann to be a habitual offender and prohibited him from driving for one year. See *id.* § 321.560.

Heinemann filed an administrative appeal and again argued one conviction was void because he was induced into entering a plea agreement through false statements. The reviewing officer rejected Heinemann's argument and affirmed the decision of the administrative law judge. Relying on *State v.*

Brauer, 540 N.W.2d 442, 445 (Iowa 1995), the officer ruled neither she nor the ALJ had the authority or jurisdiction to dismiss, amend, or alter a conviction from another jurisdiction. The officer also concluded Iowa law only allows Heinemann to contest the fact of the convictions; the validity of the underlying convictions could not be contested.

Heinemann next filed a petition for judicial review of the agency's action, arguing the revocation was not supported by substantial evidence. On December 8, 2006, the district court affirmed the DOT. The court ruled any challenge to the misinformation regarding whether or not the no driver's license violation was a moving violation was collateral and not a direct consequence of pleading guilty. Additionally, the court ruled Heinemann's plea was voluntarily entered and his conviction for no driver's license was not void.

Heinemann now appeals, arguing one of his underlying convictions is void and he is not a habitual offender.

II. SCOPE AND STANDARDS OF REVIEW.

The Iowa Administrative Procedure Act, chapter 17A of the Iowa Code, governs the scope of our review. *Bromeland v Iowa Dep't of Transp.*, 562 N.W.2d 624, 625 (Iowa 1997). The district court acts in an appellate capacity to correct errors of law on the part of the agency. *Grundmeyer v. Weyerhaeuser Co.*, 649 N.W.2d 744, 748 (Iowa 2002). In reviewing the district court's decision, our review is limited to errors at law. *Bromeland*, 562 N.W.2d at 625.

III. MERITS.

The outcome of this case is controlled by *Brauer*. 540 N.W.2d at 445. The Iowa Supreme Court held the *only* external evidence relevant in a habitual offender proceeding is evidence relating to three issues: “(1) the person named in the abstract is not the defendant; (2) the convictions shown in the abstract did not occur; or (3) the offenses underlying the convictions are not embraced by section 321.555.” *Id.*

Heinemann does not contest the agency action on any of the three allowable grounds. Rather he argues the validity of one of his underlying convictions. These arguments fail because the *Brauer* court considered and rejected a similar collateral attack. “We emphasize that only the *fact* of the convictions may be contested; the defendant may not challenge the validity of the underlying convictions unless they are void.” *Id.* (emphasis in original). The *Brauer* court cited approvingly to *State v. Kamalski*, 429 A.2d 1315, 1320-21 (Del. Super. Ct. 1981), where collateral attacks on the validity of underlying convictions were “allowed only where the judgment is void, a void judgment being a judgment rendered without jurisdiction. If a judgment is merely voidable because of some other type of defect, its validity may not be” collaterally attacked. *Kamalski*, 429 A.2d at 1320. The *Brauer* court concluded the issue “is whether the defendant was convicted, not whether he should have been convicted.” 540 N.W.2d at 445.

Substantial evidence supports the conclusion Heinemann was convicted six times and is a habitual offender. Additionally, Heinemann’s efforts to

collaterally attack one of his underlying convictions fails. Iowa only allows a habitual offender to collaterally attack an underlying criminal judgment in the very limited circumstances of a void judgment entered without jurisdiction.

AFFIRMED.