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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1834**

State of Minnesota,
Respondent,

vs.

Marcel Henri Breault,
Appellant.

**Filed September 8, 2009
Affirmed
Shumaker, Judge**

Otter Tail County District Court
File No. 56-CR-07-1455

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

David J. Hauser, Otter Tail County Attorney, Heather L. Brandborg, Assistant County Attorney, 121 West Junius, Suite 320, Fergus Falls, MN 56537 (for respondent)

Marie L. Wolf, Interim Chief Appellate Public Defender, Lydia Villalva Lijó, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Lansing, Judge; and Shumaker, Judge.

UNPUBLISHED OPINION

SHUMAKER, Judge

On appeal from his conviction of first-degree driving while impaired (DWI), appellant contends that the district court erred in ruling that appellant's South Dakota driver's license revocation could be used to enhance the Minnesota DWI charge when that revocation was the result of an uncounseled, default judgment of a DWI conviction from Wisconsin. Because the district court did not err in its ruling, we affirm.

FACTS

The facts are undisputed. After appellant Marcel Henri Breault's arrest on August 5, 2007, for driving while impaired and failure of the intoxilyzer test, respondent State of Minnesota charged him with two counts of first-degree DWI. The state based the enhanced charges on Breault's two prior Minnesota DWI convictions, dated December 10, 1999, and January 7, 2000, and a prior South Dakota driver's license revocation on November 3, 1999.

At an omnibus hearing, Breault argued that the state lacked probable cause to charge enhanced offenses because the South Dakota revocation, which was based on a Wisconsin default judgment convicting him of DWI, was not a qualified prior impaired driving incident.

The district court found that the South Dakota revocation was a valid "prior impaired driving-related loss of license" that constituted part of the probable cause for the enhanced DWI charges. The district court then held a *Lothenbach* trial, found Breault guilty and imposed an executed sentence of 54 months.

Breault now claims that the district court erred in its probable-cause ruling.

D E C I S I O N

Breault argues that his South Dakota driver's license revocation cannot be used to enhance his Minnesota DWI offense because the revocation resulted from a Wisconsin DWI conviction based on an uncounseled, default judgment. The state contends that the South Dakota driver's license revocation is a valid basis for enhancement of Breault's Minnesota DWI offense. The district court held that because Breault did not challenge his South Dakota driver's license revocation, the revocation could be used as a basis for enhancing his Minnesota DWI offense.

Applying Minnesota's DWI statute to undisputed facts involves a question of law, which we review de novo. *State v. Wiltgen*, 737 N.W.2d 561, 566 (Minn. 2007).

In Minnesota, "[a] person who violates section 169A.20 (driving while impaired) is guilty of first-degree driving while impaired if the person . . . commits the violation within ten years of the first of three or more qualified prior impaired driving incidents." Minn. Stat. § 169A.24, subd. 1(1) (Supp. 2007). The phrase "qualified prior impaired driving incidents" includes "prior impaired driving-related losses of license." Minn. Stat. § 169A.03, subd. 22 (2006). A "prior impaired driving-related loss of license" includes revocation of a driver's license in another state as long as the statute or ordinance that the revocation was based on is "in conformity with" one of the enumerated Minnesota impaired driving-related statutes. Minn. Stat. § 169A.03, subd. 21(a)(4) (Supp. 2007). Both Minnesota and South Dakota provide for opportunities to challenge driver's license revocations. Minn. Stat. § 169A.53 (2006); SD Codified Laws § 32-12-49 (2006).

This court has held that a Minnesota driver's license revocation based on a Wisconsin DWI conviction resulting from an uncounseled plea of guilty could be used to enhance a subsequent Minnesota DWI offense. *State v. McLellan*, 655 N.W.2d 669, 671 (Minn. App. 2003). In *McLellan*, we reasoned that revocation of a Minnesota driver's license based on an uncounseled plea of guilty constituted a prior impaired driving-related loss of license, and that the failure to challenge the revocation under Minn. Stat. § 169A.53 meant the revocation was a valid ground for enhancement of a subsequent Minnesota DWI charge. *Id.* Breault provides no authority for deviating from this court's decision in *McLellan*.

Instead, Breault argues that, because the revocation used to enhance his Minnesota DWI offense is from South Dakota rather than Minnesota, this court should find enhancement improper. But Breault has neither presented evidence that he challenged his South Dakota driver's license revocation nor argued that he was not provided with timely notification of the revocation and the process for challenging it.

Minnesota law specifically allows a driver's license revocation from another state to qualify as a prior impaired driving-related loss of license that can be used as a basis for enhancement of a Minnesota DWI offense if the revocation statutes are in conformity with Minn. Stat. § 169A.03, subd. 21(a)(4). Breault did not argue that South Dakota's driver's license revocation statute is not in conformity with one of Minnesota's impaired driving-related statutes enumerated in Minn. Stat. § 169A.03, subd. 21(a)(1)-(3) (Supp. 2007). Because of his failure to do so, and because our decision in *McLellan* controls, Breault's South Dakota driver's license revocation constitutes a prior impaired driving-

related loss of license under Minn. Stat. § 169A.03, subd. 21, and is a valid basis for enhancing his Minnesota DWI charge. Thus, the district court did not err in so holding.

Affirmed.