

Criminal law -- Driving under influence -- Sentencing -- Driver's license revocation -- Third DUI offense within ten years -- Operating a bicycle while intoxicated is violation of DUI statute and subjects the operator of the bicycle to driver's license revocation under section 322.28

CHAD LEE HEIKKINEN, Appellant, v. STATE OF FLORIDA, Appellee. Circuit Court, 6th Judicial Circuit (Appellate) in and for Pinellas County. Case No. CRC 07-00084APANO. UCN 52207CT032270XXXXXX. September 2, 2008. Appeal from a judgment entered by the Pinellas County Court. County Court Judge Donald E. Horrox. Counsel: Charles E. Lykes, for Appellant. Alexis C. Upton, for Appellee.

ORDER AND OPINION

(PETERS, J.) THIS MATTER is before the Court on Appellant, Chad Lee Heikkinen's appeal from a sentence of the Pinellas County Court which resulted in a revocation of Appellant's driver's license for a period of ten years. The Appellant pleaded no contest to the charged offense but reserved the right to appeal the revocation of his driver's license. After reviewing the briefs and record, this Court affirms the judgment and sentence of the trial court.

Factual Background and Trial Court Proceedings

Appellant, Chad Lee Heikkinen, was charged with riding a bicycle while intoxicated. He pled nolo contendere to a third DUI offense within ten years. He was adjudicated guilty and as part of his sentence, his driver's license was revoked for ten years. Appellant reserved the right to appeal the driver's license revocation.

The Issue

Appellant argues that the ten year revocation of his driver's license was error. Appellant concedes that driving or operating a bicycle while intoxicated is a violation of Florida Statute § 316.193, the DUI statute. *State v. Howard*, 510 So.2d 612 (Fla. 3rd DCA 1987) *rev. denied by* 520 So.2d 584 (Fla. 1988). However, Appellant argues that Florida Statutes § 322.26 and § 322.28, which address driver's license revocations, do not authorize such a revocation for operating a bicycle while intoxicated.

Standard of Review

Our review of a trial court's ruling on a judicial interpretation of a statute and a determination concerning the constitutionality of a statute are pure questions of law subject to the de novo standard of review. [*State v. Sigler*](#), 967 So.2d 835 (Fla. 2007); [*Koile v. State*](#), 934 So.2d 1226 (Fla. 2006).

The Driver's License Revocation in the Present Case

The specific statutory provision that requires the driver's license revocation in the present case is § 322.28(2) Fla. Stat. (2006). That statute, in pertinent part, provides:

(2) In a prosecution for a violation of s. 316.193 or former s. 316.1931, the following provisions apply:

(a) Upon conviction of the driver, the court, along with imposing sentence, shall revoke the driver's license or driving privilege of the person so convicted, effective on the date of conviction, and shall prescribe the period of such revocation in accordance with the following provisions:

3. Upon a third conviction for an offense that occurs within a period of 10 years after the date of a prior conviction for the violation of the provisions of s. 316.193 or former s. 316.1931 or a combination of such sections, the driver's license or driving privilege shall be revoked for not less than 10 years.

The term "driver", as defined in Chapter 316, is "(a)ny person who drives or is in actual physical control of a vehicle on a highway or who is exercising control of a vehicle or steering a vehicle being towed by a motor vehicle". § 316.003(10), Fla. Stat. (2006). The term "vehicle", as defined in Chapter 316, is "(e)very device, in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks". § 316.003(75), Fla. Stat. (2006). See *Smith v. State*, 12 Fla. Law Weekly Supp. 279 (6th Judicial Circuit Court of Florida, January 11, 2005).

This applicable statutory provision is clear and unambiguous and its plain and ordinary meaning must control. The statute requires the Appellant's driver's license be revoked for ten years. When the statutory language is clear, courts have no occasion to resort to rules of construction -- they must read the statute as written, for to do otherwise would constitute an abrogation of legislative power. [*Koile v. State*](#), 934 So.2d 1226, 1231 (Fla. 2006).

Conclusion

This court concludes that the sentence of the Pinellas County Court which resulted in a revocation of Appellant's driver's license for a period of ten years should be affirmed.

IT IS THEREFORE ORDERED that the judgment and sentence of the trial court is affirmed. (Michael F. Andrews, Raymond O. Gross and R. Timothy Peters, JJ.)

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