

Summary of SC90181, Justin Wayne Akins v. Director of Revenue, State of Missouri

Appeal from the Jefferson County circuit court, Judge Shannon Renee Dougherty
Argued and submitted Dec. 15, 2009; opinion issued Feb. 23, 2010

Attorneys: Akins was represented by Kevin C. Roberts and Michelle St. Germain of Breeze, Roberts, Ponder-Bates, Wooten & Zimmer LLC in Hillsboro, (636) 797-2693; and the director was represented by State Solicitor James R. Layton and Charles L. Gooch of the attorney general's office in Jefferson City, (573) 751-3321.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A man challenges the 10-year denial of his driving privileges after being convicted of three criminal counts arising out of one incident in which he was driving while intoxicated. In a unanimous decision written by Judge Richard B. Teitelman, the Supreme Court of Missouri affirms the judgment. The relevant statute's requirement that a person be "convicted more than twice" for offenses related to driving while intoxicated refers to the number of convictions, not the number of incidents resulting in convictions.

Facts: In July 2006, Justin Akins was driving while intoxicated and caused a collision in which three people were injured. He pleaded guilty to three counts of second-degree vehicular assault, though the convictions were consolidated into one criminal case number. The director of revenue subsequently denied Akins' driving privileges for 10 years, pursuant to section 302.060(9), RSMo Supp. 2008, because he had been "convicted more than twice for offenses relating to driving while intoxicated." Akins sought review in the circuit court, which affirmed the director's denial of the driving privileges. Akins appeals.

AFFIRMED.

Court en banc holds: The circuit court properly upheld the director's 10-year denial of Akins' driving privileges. Neither section 302.060(9) nor section 302.010(3), RSMo Supp. 2008, definitively defines "convicted" or "conviction." The definitive concept for these terms in an ordinary dictionary, however, is that there has been a judicial determination that a defendant is guilty of an offense or crime. Accordingly, the phrase "has been convicted" as used in section 302.060(9) refers to the number of offenses or crimes committed irrespective of the number of separate incidents resulting in convictions. This conclusion is supported by the legislature's specification, in sections 558.016.3 and .5, RSMo, pertaining to persistent offenders, that the offenses must have been "committed at different times." Had the legislature intended section 302.060(9) to apply only to offenses committed at different times, it could have included such language in the statute. *Harper v. Director of Revenue*, 118 S.W.3d 195 (Mo. App. 2003), which holds to the contrary, is overruled. Here, because Akins has three convictions relating to driving while intoxicated, he has been "convicted more than twice for offenses relating to driving while intoxicated" under section 302.060(9).