

RENDERED: May 23, 2003; 2:00 p.m.  
NOT TO BE PUBLISHED

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2002-CA-001258-MR

MICHAEL WILLIAMS

APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE LAURANCE B. VANMETER, JUDGE  
ACTION NO. 02-CR-00101

COMMONWEALTH OF KENTUCKY

APPELLEE

### OPINION

### AFFIRMING

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BEFORE: EMBERTON, CHIEF JUDGE; BAKER AND HUDDLESTON, JUDGES.

BAKER, JUDGE. Michael Ray Williams (Williams) brings this appeal from a May 16, 2002, judgment of the Fayette Circuit Court. We affirm.

Williams pled guilty in the Fayette Circuit Court to first degree possession of a controlled substance (Class D felony), possession of drug paraphernalia (Class A misdemeanor), and being a first degree persistent felony offender (PFO I). In

exchange for Williams' guilty plea, the Commonwealth recommended a sentence of one (1) year on the controlled substance charge enhanced to ten (10) years due to the PFO I and of twelve (12) months on the misdemeanor to run concurrently with the felony charge.

At sentencing, Williams moved the Fayette Circuit Court to grant him probation and to refer him to drug court. The circuit court believed Williams to be ineligible for probation under Kentucky Revised Statute (KRS) 532.080(7) and denied Williams' motion for probation. Williams ultimately was sentenced to a total of ten (10) years' imprisonment. This appeal follows.

Williams argues that the Fayette Circuit Court erroneously denied him probation under KRS 532.080(7), which reads in pertinent part:

(7) A person who is found to be a persistent felony offender in the first degree shall not be eligible for probation, shock probation, or conditional discharge, unless **all offenses for which the person stands convicted** are Class D felony offenses which do not involve a violent act against a person, in which case probation, shock probation, or conditional discharge may be granted. **If the offense the person presently stands convicted** of is a Class A, B, or C felony, the person shall not be eligible for parole until the person has served a minimum term of incarceration of not less than ten (10) years. (emphases added).

Under the circuit court's interpretation of the above statute, Williams was ineligible for probation because one of his prior convictions was a Class C felony. Williams argues that the circuit court misinterpreted KRS 532.080(7) and believes that he is eligible for probation thereunder. To be eligible for probation, Williams maintains that KRS 532.080(7) only requires those offenses for which he is currently convicted be Class D felonies.

It is well established that interpretation and construction of a statute is a matter of law for the court. Floyd County Board of Education v. Ratliff, Ky., 955 S.W.2d 921 (1997). Our paramount concern is to give effect to the intent of the legislature. Magic Coal Co. v. Fox, Ky., 19 S.W.3d 88 (2000). The language of a statute is often the best guide to ascertain legislative intent. Gateway Const. Co. v. Wallbaum, Ky., 356 S.W.2d 274 (1962).

We interpret the phrase "unless all offenses for which the person stands convicted are Class D Felony offenses" as referring not only to those offenses for which the defendant stands currently convicted but also to those offenses for which the defendant has previously been convicted. We are buttressed in our interpretation by looking to the statute as a whole. We point to the subsequent statutory language "[i]f the offense the person presently stands convicted." Here, the legislature is

plain and unambiguous. By utilizing the word "presently," only an offense for which the defendant is currently convicted is to be considered. If the legislature has so intended, it could have easily utilized the word "presently" and required only "present" convictions to be considered for probation purposes. Hence, we are of the opinion that Williams was ineligible for probation under KRS 532.080(7).

For the foregoing reasons, the judgment of the Fayette Circuit Court is affirmed.

EMBERTON, CHIEF JUDGE, CONCURS.

HUDDLESTON, JUDGE, DISSENTS.

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