

**Commonwealth Of Kentucky**  
**Court of Appeals**

NO. 2005-CA-000640-MR

LEQUA MARTEZ HICKMAN

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE MARTIN F. MCDONALD, JUDGE  
ACTION NO. 03-CR-002118

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
VACATING AND REMANDING

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BEFORE: TACKETT AND TAYLOR, JUDGES; EMBERTON, SENIOR JUDGE.<sup>1</sup>

TACKETT, JUDGE: LeQua Hickman appeals from the order of the Jefferson Circuit Court sentencing him to serve out the remainder of his recommended prison sentence. Hickman argues on appeal that the circuit court misapplied the statutes pertaining to re-sentencing a youthful offender upon reaching the age of majority. We agree, and vacate the order of the circuit court and order a new hearing.

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<sup>1</sup> Senior Judge Thomas D. Emberton sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

Hickman entered Alford pleas as a youthful offender to charges of assault in the first degree and robbery in the first degree in 2004 for offenses occurring in 2003, receiving fourteen-year sentences on each charge, to be served concurrently. Upon reaching the age of eighteen, Hickman was re-sentenced and ordered to serve the remainder of his sentence in prison. The circuit court ruled Hickman statutorily ineligible for probation based on Kentucky Revised Statute (KRS) 439.3401, which prohibits probation for those convicted of certain violent offenses. Hickman argued unsuccessfully that the statute pertaining to youthful offenders, KRS 640.030, permits probation regardless of the offense charged, as one of the three options the circuit court must consider at the age of majority hearing. This appeal followed.

The question presented on appeal is a simple question of statutory construction and application. The circuit court held that the statute prohibiting probation for violent offenders controls over the statute mandating consideration of probation for youthful offenders, as it pertains to a specific class of offenses. Hickman contends that the opposite conclusion is required; the statute on youthful offenders must control over the statute on violent offenders because it governs treatment of a specific class of offenders regardless of the offense for which they are convicted. On careful review of the

two statutes, past decisions of this Court and our Supreme Court, and the guiding principles of statutory construction, we conclude that Hickman's interpretation is correct, and so vacate the order of the circuit court.

KRS 439.3401(3) reads in pertinent part as follows:

A violent offender who has been convicted of a capital offense or Class A felony with a sentence of a term of years or Class B felony who is a violent offender shall not be released on probation or parole until he has served at least eighty-five percent (85%) of the sentence imposed.

KRS 640.030 governs youthful offenders who have been convicted of felony offenses, and requires that youthful offenders shall be subject to the same type of sentencing procedures as an adult with certain exceptions. KRS 640.030(2) requires:

If an individual sentenced as a youthful offender attains the age of eighteen (18) prior to the expiration of his sentence, and has not been probated or released on parole, that individual shall be returned to the sentencing court. At that time, the sentencing court shall make one (1) of the following determinations:

- (a) Whether the youthful offender shall be placed on probation or conditional discharge;
- (b) Whether the youthful offender shall be returned to the Department of Juvenile Justice to complete a treatment program . . . . At the conclusion of the treatment program, the individual shall be returned to the sentencing court for a determination under

paragraph (a) or (c) of this subsection; or

- (c) Whether the youthful offender shall be incarcerated in an institution operated by the Department of Corrections[.]

The circuit court held that because the statute prohibiting probation for violent offenders makes no exception for juveniles, therefore juveniles are subject to its provisions, making Hickman ineligible for probation. Comparing the two statutes side-by-side, however, we believe that it is clear that the statute on youthful offenders is intended to create exceptions for juveniles to the applicable laws on sentencing. The statute uses mandatory language requiring the sentencing court to consider three options upon a youthful offender's reaching the age of majority. No exceptions are made for the type of offense of which the youthful offender was convicted. Given the ameliorative purpose of the juvenile code and the rehabilitative aim of even the youthful offender provisions of the juvenile code, the legislative intent to treat youthful offenders differently is apparent and must not be swept aside in favor of the harsher law applying to adult offenders. Past decisions of the Kentucky Supreme Court recognize this legislative intent to treat juveniles differently as controlling. See Commonwealth v. Jeffries, 95 S.W.3d 60 (Ky. 2003); Britt v. Commonwealth, 965 S.W.2d 147, 150 (Ky. 1998).

The result reached by the circuit court is contrary to the intent of the juvenile code, and therefore must be vacated.

When statutes are in apparent conflict, two guiding principles are followed. More specific statutes control over general ones applying to the same subject matter, and statutes adopted later are considered controlling over earlier ones.

Travelers Indem. Co. v. Reker, 100 S.W.3d 756 (Ky.

2003)(restating the rule that later enactments prevail if two statutes are irreconcilable), Commonwealth v. Phon, 17 S.W.3d 106 (Ky. 2000)(requiring courts to harmonize two conflicting statutes where possible). We hold that the two statutes are reconcilable, in favor of the overall legislative purpose of the juvenile code to rehabilitate offenders when possible rather than to punish them. Even if the two statutes could not be reconciled, the legislature adopted the provisions prohibiting probation for violent offenders in the 2002 session. The legislature also revised the statute covering youthful offenders in the 2004 session. Since the legislature was surely aware of its action in the prior session, it could have altered the statute on youthful offender sentencing to reflect an exception, but it did not. The language specifying that the provisions of KRS 640.030 are exceptions to the general law of sentencing of felony offenders, then, must be taken to apply to KRS 439.3401 as well.

The record reflects that while in treatment at Lincoln Village, Hickman graduated from the program, obtained a GED, and obtained a Pell Grant to attend college. Upon remand, the circuit court must consider Hickman's efforts toward rehabilitation in deciding whether Hickman should be granted probation.

For the foregoing reasons, the judgment of the Jefferson Circuit Court is vacated and remanded for a new hearing to consider all the options mandated by KRS 640.030 including whether Hickman shall be released on probation.

ALL CONCUR.

BRIEFS AND ORAL ARGUMENT FOR  
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