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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-000816-MR

MICHELLE DUNN

APPELLANT

v. APPEAL FROM KNOX CIRCUIT COURT
HONORABLE RODERICK MESSER, JUDGE
ACTION NO. 02-CR-00094

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * **

BEFORE: HENRY, JOHNSON, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: The issue in this appeal is whether a youthful offender, who reaches eighteen years of age and is returned to court for final sentencing, is subject to the violent offender prohibition against probation. We agree with the trial court that a youthful offender who is resentenced at eighteen is subject to the violent offender prohibition on probation under KRS 533.010(2). Hence, we affirm.

Michelle Dunn was a juvenile when she was charged with robbery in the first degree, assault in the first degree, and

receiving stolen property over \$300.00. She entered a plea (as a youthful offender) to all counts in exchange for a ten year sentence. Still a juvenile, she was sent to a juvenile detention facility to begin her sentence (Morehead Youth Development Center). At eighteen years of age, Michelle Dunn was returned to the court for a sentencing hearing for a youthful offender who has reached majority (pursuant to KRS 640.030(2)).

At the hearing, defense counsel wanted to present evidence of rehabilitation and request probation. However, the court refused to hear any testimony because it was of the opinion that because Michelle Dunn's offenses qualified for violent offender consideration, Michelle was not eligible for probation and the evidence would be moot. The court then transferred Michelle to the Perry County Detention Facility where she stayed until transferred to the Department of Corrections.

On appeal, Michelle Dunn contends the trial court erred in refusing to consider evidence that supported probation, and the refusal itself to consider probation. We disagree. Michelle Dunn entered a plea to first-degree robbery, which fits the definition of a violent offender under KRS 439.3401(1). Subsection 3 of that statute dictates that such an offender "shall not be released on probation or parole until [she] has

served at least eighty-five percent (85%) of the sentence imposed." An adult classified as a violent offender is ineligible for probation under KRS 533.010(2). "A youthful offender, who is convicted of, or pleads guilty to, a felony offense in Circuit Court, shall be subject to the same type of sentencing procedures and duration of sentence, including probation and conditional discharge, as an adult convicted of a felony offense" KRS 640.030.

A youthful offender has no guarantee of probation and under KRS 640.030(2), the sentencing court may only make a decision regarding probation after considering the factors set forth in KRS 533.010. KRS Chapter 533 "Probation and Conditional Discharge," the statute which applies to the probation of adult offenders, is equally applicable to youthful offenders.

Commonwealth v. Jeffries, 95 S.W.3d 60, 62 (Ky. 2002) (citations omitted). The trial court did not err in ruling that Michelle Dunn was ineligible for probation.

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

ALL CONCUR.

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