

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-001304-MR

DONALD T. CHRISTY

APPELLANT

v. APPEAL FROM MASON CIRCUIT COURT
HONORABLE STOCKTON B. WOOD, JUDGE
ACTION NO. 07-CR-00038

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** *

BEFORE: COMBS, CHIEF JUDGE; DIXON, JUDGE; KNOPF,¹ SENIOR JUDGE.

KNOPF, SENIOR JUDGE: Donald T. Christy appeals from his judgment and sentence from a conditional plea of guilty before the Mason Circuit Court. Finding no error, we affirm.

Christy was arrested on January 19, 2007, for suspected driving under the influence (DUI). He was indicted by the Mason County Grand Jury on March 23, 2007,

¹ Senior Judge William L. Knopf sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

and charged with operating a motor vehicle while under the influence of alcohol,² fourth offense, and operating a motor vehicle while license suspended for driving under the influence,³ first offense. Christy had three prior DUI convictions. He was convicted of his first DUI offense on September 22, 2003, while he was sixteen years of age. Christy's second conviction on March 2, 2005, and his third conviction on March 28, 2005, both occurred when he was eighteen years of age.

On April 11, 2007, Christy filed a "motion to exclude juvenile DUI and prohibit enhancement" arguing that the enhancement statute of KRS 189A.010(5)(d), which makes a fourth or subsequent DUI offense a felony, does not apply to Christy because he was a minor when he was convicted of his first DUI offense. The trial court entered an order denying Christy's motion on April 30, 2007. Christy entered a conditional guilty plea on May 11, 2007, and was sentenced to a total of two-years' imprisonment. This appeal followed.

Christy argues that his 2003 conviction for his first DUI offense, while he was sixteen years of age, was governed by the Kentucky Unified Juvenile Code and should not be used as the basis for a fourth offense DUI enhancement making the offense a felony. Christy also argues the enhancement denies him equal protection under the Fourteenth Amendment of the United States Constitution. Finally, Christy argues that the rule of lenity should be applied in his favor because KRS 610.010 and KRS 189A.010 are in conflict. Because we find no error in the circuit court's decision, we affirm Christy's conviction.

² KRS 189A.010.

³ KRS 189A.090.

The Kentucky Unified Juvenile Code does not apply to DUI prosecutions.

KRS 610.010 of the juvenile code titled, “District Court jurisdiction of juvenile matters,” reads:

(1) Unless otherwise exempted by KRS Chapters 600 to 645, the juvenile session of the District Court of each county shall have exclusive jurisdiction in proceedings concerning any child living or found within the county who has not reached his or her eighteenth birthday or of any person who at the time of committing a public offense was under the age of eighteen (18) years, who allegedly:

(a) Has committed a public offense prior to his or her eighteenth birthday, except a motor vehicle offense involving a child sixteen (16) years of age or older. A child sixteen (16) years of age or older taken into custody upon the allegation that the child has committed a motor vehicle offense shall be treated as an adult and shall have the same conditions of release applied to him or her as an adult.

KRS 610.010(1)(a) also states that a “‘motor vehicle offense’ shall not be deemed to include the offense of stealing or converting a motor vehicle no operating the same without the owner’s consent nor any offense which constitutes a felony.” A first DUI offense committed at the age of sixteen clearly falls outside of the jurisdiction of the juvenile code because it is not one of the exempted motor vehicle offenses listed above and thus, falls within the jurisdiction of the adult session of the district court as outlined in KRS 610.010(1)(a). In other words, Christy’s first DUI offense in 2003 was within the exclusive jurisdiction of the district court.

Christy is correct in stating that “in a case of statutory interpretation, the duty of the court is to determine and enforce the intent of the General Assembly.” *See Commonwealth v. Harrelson*, 14 S.W.3d 541, 546 (Ky. 2000). The Kentucky Supreme Court also noted in *Harrelson* that “we are not at liberty to add or subtract from the

legislative enactment or discover meanings not reasonably ascertainable from the language used.” *Id.* This is exactly what Christy asks this Court to do. If the legislature had intended for DUI offenses to fall within the purview of KRS 610.010(1)(a), it would have added explicit language to accommodate its intentions. Since KRS 610.010(1)(a) fails to mention anything about DUI offenses, we are convinced that the statute does not apply to DUI offenses and such offenses are not governed by the juvenile code.

Applying *Phelps v. Commonwealth*, 125 S.W.3d 237 (Ky. 2004), Christy argues that “the Kentucky Supreme Court noted that the Juvenile Code was enacted with the stated purpose of rehabilitating juvenile offenders, when possible, as opposed to the punitive purpose of the adult penal code.” However, the purpose of the juvenile code is of no importance in this case, as we have already discussed that DUI offenses are within the exclusive jurisdiction of the adult session of district court.

Christy next argues that the felony enhancement denied him equal protection under the Fourteenth Amendment of the United States Constitution. He argues that his fourth DUI conviction violates equal protection because the circuit court allowed the use of the DUI conviction he received as a juvenile to enhance his current DUI offense from a misdemeanor to a felony. There is a violation of equal protection, as Christy argues, because two distinct classes of individuals are being arbitrarily excluded from such felony enhancement. The two distinct classes are: 1) juveniles who are adjudicated for enhanceable crimes or tried as youthful offenders in circuit court for serious felonies but are not subject to PFO enhancement as adults: and 2) juveniles in district court who receive four DUI convictions but are excluded from felony

enhancement. Christy alleges that there is no rational basis for putting only certain individuals in jeopardy of an enhanced sentence based on their behavior as juveniles.

The Commonwealth argues that Christy has failed to point to any particular statute that violated his equal protection rights because he only alleges that his fourth DUI conviction is in violation of equal protection. We agree with the Commonwealth. The burden of proving a constitutional violation, including equal protection violations, rests with the party alleging the violation. *Commonwealth v. Howard*, 969 S.W.2d 700, 703-04 (Ky. 1998). In this case, the burden is on Christy to show that some statute violated his equal protection of the law. Since Christy does not argue that a particular statute violates his right to equal protection of the law as afforded by the Fourteenth Amendment to the U.S. Constitution, he has not met his burden of proof.

Finally, Christy argues that a conflict exists between KRS 610.010(1)(a) and KRS 189A.010(5) & (7), and the rule of lenity applies when it is unclear whether or not a conviction will be classified as a felony or a misdemeanor. Christy argues:

The juvenile code prohibits any motor vehicle offense committed by a juvenile from being treated as a felony. *See* KRS 610.010, *supra*. However, KRS 189A.010(7) is in conflict with that statute, providing that a person under twenty-one with an alcohol concentration of 0.08 or more shall be subject to the penalties in subsection (5) of the statute. Subsection (5)(d) makes a person's fourth DUI in five years a Class D felony.

The rule of lenity applies only when statutes are ambiguous and must be resolved in favor of a criminal defendant. *White v. Commonwealth*, 178 S.W.3d 470, 484 (Ky. 2005).

Again, Christy alleges that he was convicted of his first DUI, while a juvenile, in district court pursuant to the juvenile code, "which prohibits a motor vehicle offense committed by a juvenile from being treated as a felony." As noted earlier, KRS 189A is not

included in the juvenile code, and persons under eighteen years of age charged with KRS 189A offenses are to be prosecuted in the adult session of district court. Neither KRS 189A.010 or KRS 610.010 is ambiguous, nor are they in conflict with each other.

For the reasons stated above, the judgment of the Mason Circuit Court is affirmed.

ALL CONCUR.

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