

RENDERED: August 28, 1998; 10:00 a.m.  
NOT TO BE PUBLISHED

# Commonwealth Of Kentucky

## Court Of Appeals

No. 96-CA-002682-MR

ANDRE LESHAWN MORRIS

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE JAMES M. SHAKE, JUDGE  
ACTION NO. 95-CR-1362

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
REVERSING AND REMANDING

\* \* \* \* \*

BEFORE: COMBS, GUIDUGLI and JOHNSON, Judges.

JOHNSON, JUDGE: Andre LeShawn Morris (Morris) brings this appeal from an order of the Jefferson Circuit Court entered on September 4, 1996, that denied his motion for shock probation. The circuit court based its denial of the motion on its belief that Morris "must be treated as an adult, and pursuant to KRS 533.060(1), under the facts of this case he may not be considered and is not

eligible for probation, shock probation, or conditional discharge." Since Morris had another appeal pending involving the issue of his eligibility for probation, this appeal was abated by order of this Court entered on March 4, 1998, "pending the issuance of a final opinion from the Supreme Court of Kentucky in Morris v. Commonwealth, ex rel., case number 96-SC-0790-DG."<sup>1</sup> The Supreme Court on March 19, 1998, rendered its opinion in Britt v. Commonwealth, Ky., \_\_\_\_\_ S.W.2d \_\_\_\_\_ (1998), which constituted a single opinion that also resolved the Morris case. Since the Supreme Court held in Britt that ". . . KRS 635.020(4) does not create a new category of adult offender that precludes children transferred to circuit court pursuant to it from eligibility for the ameliorative provisions of KRS 640.040[,]" we must reverse the order of the circuit court and remand this matter for proper consideration of Morris' motion for shock probation.

ALL CONCUR.

BRIEF FOR APPELLANT:

Hon. J. David Niehaus  
Hon. Daniel T. Goyette  
Louisville, KY

BRIEF FOR APPELLEE:

Hon. A. B. Chandler, III  
Attorney General  
Hon. Perry T. Ryan  
Assistant Attorney General

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<sup>1</sup>This appeal should have been abated pending final disposition in Andre Leshawn Morris v. Commonwealth, case number 97-SC-285, and Britt v. Commonwealth, case number 97-SC-283. As final disposition in the Britt and Morris cases has been reached, the current appeal was returned to the Court's active docket on July 22, 1998.

Frankfort, KY