

Commonwealth Of Kentucky

Court Of Appeals

NO. 1997-CA-003073-MR

ANTHONY WILLIAMS

APPELLANT

V. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JAMES M. SHAKE, JUDGE
ACTION NO. 97-CR-262

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION VACATING AND REMANDING

* * * * *

BEFORE: GUDGEL, Chief Judge; GUIDUGLI and MILLER, Judges.

GUDGEL, CHIEF JUDGE: This is an appeal from an order entered by the Jefferson Circuit Court denying appellant Anthony Williams' motion to be resentenced as a youthful offender. On appeal, appellant contends that the circuit court erred by not treating him as a youthful offender eligible for the ameliorative sentencing provisions of KRS 640.030(2). In light of the recent opinion in Britt v. Commonwealth, Ky., 965 S.W.2d 147 (1998), we agree. Hence, we vacate and remand the court's order.

The facts are essentially uncontroverted. Appellant was arrested when he was seventeen years old for first-degree assault, first-degree robbery, and first-degree wanton

endangerment. The charges were ordered transferred to the circuit court pursuant to KRS 635.020(4), and consistent with a plea agreement, appellant pled guilty to the offenses of robbery in the first degree and assault in the second degree. He was sentenced to eleven years' imprisonment. The court's judgment directed that appellant be transferred to the custody of the Department of Corrections when he reached his eighteenth birthday. Before his eighteenth birthday, appellant filed a motion requesting the circuit court to resentence him as a youthful offender. The court denied the motion and this appeal followed.

Appellant contends that the circuit court erred by failing to treat him as a youthful offender eligible for the ameliorative sentencing provisions of KRS 640.030(2). We agree.

The supreme court rendered its opinion in Britt v. Commonwealth, Ky., 965 S.W.2d 147 (1998), after the circuit court herein entered its order denying appellant's motion. The court held in Britt that "juveniles transferred to circuit court pursuant to the 1994 version of KRS 635.020(4) are to be considered 'youthful offenders' eligible for the ameliorative sentencing provisions of KRS Chapter 640." 965 S.W.2d at 150. Obviously, therefore, the circuit court herein erred by failing to treat appellant as a youthful offender.

The Commonwealth contends, however, that Britt did not address the issue of resentencing and that KRS 635.020(4) evinces a legislative intent that a juvenile convicted of a felony with a

firearm is not entitled to resentencing at age eighteen. The Commonwealth bases its argument on the fact that both the 1994 and the 1997 versions of KRS 635.020(4) end with the phrase, "at age eighteen (18) he shall be transferred to an adult facility operated by the Department of Corrections to serve any time remaining on his sentence." The Commonwealth's argument, however, is clearly without merit. Indeed, in addition to holding 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," 965 S.W.2d at 149, the court stated as follows:

The effect of [the 1996] amendments is that every child transferred to circuit court pursuant to KRS 635.020(4) after the effective date of July 15, 1997, will be transferred as a youthful offender, and, thus, all ameliorative sentencing procedures authorized for youthful offenders, particularly those set out in KRS 640.030 and 640.040, are available to that child. Appellant maintains this amendment shows that this was the intention of the General Assembly all along. We agree and find the Commonwealth's remaining arguments to the contrary to be without merit.

. . . [W]e hold that juveniles transferred to circuit court pursuant to the 1994 version of KRS 635.020(4) are to be considered "youthful offenders" eligible for the ameliorative sentencing provisions of KRS Chapter 640.

Britt, 965 S.W.2d at 150.

For the reasons stated, the court's order is vacated and this matter is remanded to that court for further proceedings consistent with our views.

ALL CONCUR.

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