

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-002639-MR
AND
NO. 2005-CA-001790-MR

BOBBY C. JONES

APPELLANT

APPEAL FROM MONTGOMERY CIRCUIT COURT
v. HONORABLE WILLIAM B. MAINS, JUDGE
ACTION NO. 04-CR-00035

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION AND ORDER
AFFIRMING

** ** * * *

BEFORE: TAYLOR, JUDGE; ROSENBLUM,¹ SENIOR JUDGE; MILLER,²
SPECIAL JUDGE.

TAYLOR, JUDGE: Bobby C. Jones brings Appeal No. 2004-CA-002639-
MR from a November 29, 2004, judgment and sentence of the
Montgomery Circuit Court upon a guilty plea to incest. Jones
also brings Appeal No. 2005-CA-001790-MR from an August 2, 2005,

¹ Senior Judge Paul W. Rosenblum sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

² Retired Judge John D. Miller sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution.

order of the Montgomery Circuit Court summarily denying his Ky. R. Crim. P. (RCr) 11.42 motion to vacate sentence. We affirm both appeals.

The Montgomery County Grand Jury indicted Jones upon the offense of incest for having sexual intercourse with his stepchild during the period of 1996 through 2003. Kentucky Revised Statutes (KRS) 530.020. Jones was accused of having sexual intercourse with his stepdaughter, who was twenty years old in 1996.

Pursuant to a plea agreement, Jones entered a plea of guilty to the charge of incest. By judgment and sentence entered on November 29, 2004, Jones was sentenced to six years' imprisonment. Shortly thereafter, Jones filed a motion for new trial under RCr 10.02. Jones pointed out that his stepdaughter was an adult at the time of their sexual relations and not a child. Under the incest penal statute (KRS 530.020), Jones argued that only sexual intercourse between a "stepparent and stepchild" is prohibited. Consequently, Jones contended that sexual intercourse with his adult stepdaughter was not proscribed under the plain terms of KRS 530.020 and, thus, the indictment failed to charge a public offense.

By order entered December 10, 2004, the circuit court denied Jones's RCr 10.02 motion. The court held that the "RCr 10.02 is inappropriate for relief in this matter." Thereupon,

Jones filed Appeal No. 2004-CA-002639-MR challenging the November 29, 2004, judgment and sentence upon guilty plea.

In February 2005, Jones filed an RCr 11.42 motion to vacate sentence. He claimed that his trial counsel was ineffective for advising him to plead guilty since the victim was over the age of eighteen. To support this claim, Jones again argued that KRS 530.020 does not prohibit sexual intercourse between a stepparent and his adult stepdaughter. The circuit court disagreed with Jones's interpretation of KRS 530.020 and summarily denied the RCr 11.42 motion. Jones brings Appeal No. 2005-CA-001790-MR from the order denying his RCr 11.42 motion.

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In his direct appeal, Jones contends the circuit court erred by denying his RCr 10.02 motion for a new trial. Specifically, Jones argues that his guilty plea was invalid because the indictment did not charge a public offense. We do not reach the merits of this argument because Jones failed to properly challenge the guilty plea.

On November 29, 2004, Jones entered a guilty plea and was sentenced to six years' imprisonment. To attack his guilty plea, Jones chose to file an RCr 10.02 motion for a new trial. RCr 10.02 provides:

(1) Upon motion of a defendant, the court may grant a new trial for any cause which prevented the defendant from having a fair trial, or if required in the interest of justice. If trial was by the court without a jury, the court may vacate the judgment, take additional testimony and direct the entry of a new judgment.

(2) Not later than ten (10) days after return of the verdict, the court on its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a defendant, and in the order shall specify the grounds therefor.

By its very terms, RCr 10.02 is limited in scope to the granting of a "new trial." As there is no "trial" with the entry of a guilty plea, it is axiomatic that a guilty plea cannot be properly challenged by an RCr 10.02 motion for a new trial. Accordingly, we decline to reach the merits and summarily affirm the circuit court denial of his RCr 10.02 motion.

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Jones contends the circuit court erred by denying his RCr 11.42 motion. In particular, Jones claims that his trial counsel was ineffective for advising him to plead guilty. In support thereof, Jones argues that KRS 530.020 only criminalizes sexual intercourse between a "stepparent and stepchild." Jones points out that KRS 15.900 defines child as a person under the age of eighteen years. According to Jones's interpretation of

KRS 530.020, only sexual intercourse between a stepparent and stepchild under the age of eighteen years is prohibited.

Because Jones's stepdaughter was twenty years old at the time of the earliest charge, Jones maintained that his conduct with his stepdaughter was not criminalized by KRS 530.020 and trial counsel was ineffective for advising him to plead guilty to incest.

To prevail, Jones must demonstrate that trial counsel's performance was deficient and that absent such deficiency, there existed a reasonable probability that he would not have pleaded guilty. Sparks v. Commonwealth, 721 S.W.2d 726 (Ky.App. 1986); Shelton v. Commonwealth, 928 S.W.2d 817 (Ky.App. 1996).

Incest is criminalized by KRS 530.020 and reads, in part, as follows:

(1) A person is guilty of incest when he has sexual intercourse or deviate sexual intercourse, as defined in KRS 510.010, with a person whom he knows to be an ancestor, descendant, brother, or sister. The relationships referred to herein include blood relationships of either the whole or half blood without regard to legitimacy, relationship of parent and child by adoption, and relationship of stepparent and stepchild.

It is well-established that interpretation and construction of a statute is a matter of law for the Court. City of Worthington Hills v. Worthington Fire Protection

District, 140 S.W.3d 584 (Ky.App. 2004). When interpreting a statute, we are primarily guided by legislative intent and legislative purpose behind enacting the statute. City of Louisville v. Helman, 253 S.W.2d 598 (Ky. 1952). The legislative intent and purpose of a statute may be gleaned from its language. Carroll Co. Fiscal Court, 633 S.W.2d 720 (Ky.App. 1982).

From its language, we glean the purpose of KRS 530.020 is to prohibit sexual intercourse between persons within certain proscribed degrees of relationship to each other. It is designed to generally protect the family unit, and to specifically protect society from genetic mutations that may occur in issue of incestuous relationships. In furtherance of protecting the family unit, our legislature particularly prohibited sexual intercourse between "stepparent and stepchild." KRS 530.020. The common definition of "stepchild" is "a child of one's wife or husband by a former marriage[.]" MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 1149 (10th ed. 2002). And, a "child" is defined as:

1a: an unborn or recently born person . . .
2a: a young person esp. between infancy and youth . . . 4a: a son or daughter of human parents . . . [.]

MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 198 (10th ed. 2002).

Jones urges us to adopt a narrow definition of "stepchild" as including only an individual under the age of eighteen. He cites us to the definition of child in KRS 15.900 in support thereof. However, the definitions contained in KRS 15.900 are only applicable to KRS 15.910 to KRS 15.940. In fact, KRS 15.900 explicitly states that the definitions therein are to be "used in KRS 15.910 to KRS 15.940." Simply put, there is no authority for applying KRS 15.900(1)'s definition of "child" to KRS 530.020. As such, we do not believe KRS 15.900(1) provides the proper definition of child or stepchild as found in KRS 530.020.

Rather, we interpret "stepchild" broadly as meaning a son or daughter of one's wife or husband. Plainly stated, we view the term "stepchild" as encompassing both an adult and minor child of one's wife or husband. This interpretation better comports with the legislative purpose of KRS 530.020 - the protection of the family unit. We can find no legal authority that leads us to believe the general assembly intended for incest under KRS 530.020 to be limited to relationships with children under the age of eighteen. It stands to reason that the family unit is equally threatened by sexual relations between a stepparent and adult stepchild as between a stepparent and minor stepchild.

Our interpretation of the term "stepchild" is buttressed by the General Assembly's subsequent amendment of KRS 530.020 in 2006. While not amending the substantive terms and, in particular, the terms "stepparent and stepchild," the legislature amended the penalty section of KRS 530.020 and specifically recognized that incest committed by two consenting adults constituted a Class C Felony. In discerning legislative intent and purpose, the subsequent amendment of a statute is a valid consideration. See Commonwealth v. Meyers, 8 S.W.3d 58 (Ky.App. 1999).

Accordingly, we hold that "stepchild" in KRS 530.020 means a son or daughter of one's wife or husband. Thus, Jones was properly indicted upon the offense of incest for having sexual intercourse with his adult stepdaughter. Based upon our interpretation of KRS 530.020, we do not believe that Jones's trial counsel was ineffective in this regard.

Having considered the Commonwealth of Kentucky's motion to dismiss Appeal No. 2004-CA-002639-MR and being otherwise sufficiently advised; the Court ORDERS the motion be, and it is hereby, DENIED.

For the foregoing reasons, Appeal Nos. 2004-CA-002639-MR and 2005-CA-001790-MR are affirmed.

ROSENBLUM, SENIOR JUDGE, CONCURS IN RESULT ONLY.

MILLER, SPECIAL JUDGE, DISSENTS AND FILES SEPARATE
OPINION.

ENTERED: February 2, 2007

/s/ Jeff Taylor
JUDGE, COURT OF APPEALS

MILLER, SPECIAL JUDGE, DISSENTING. I do not interpret
KRS 530.020 as criminalizing sexual relationships between a
stepparent and a stepchild over 18 years of age as it does not
deprecate the family unit nor implicate hereditary risk. I do
not believe the legislature intended the term "stepchild" to
apply to a person over 18 years of age.

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