

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL PAUL KREDELL,

Defendant-Appellant.

UNPUBLISHED

December 28, 2001

No. 226400

Iosco Circuit Court

LC No. 99-003943-FH

Before: Meter, P.J., and Jansen and R. D. Gotham*, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of third-degree fleeing and eluding a police officer under § 602a of the Michigan Vehicle Code, MCL 257.602a, and the trial court sentenced him to five years' probation with the first nine months to be spent in jail. Defendant appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's conviction arose out of defendant's failure to stop his ORV when signaled to do so by a sheriff's deputy as he drove first on a public highway and then on a two-track. His sole claim on appeal is that the prosecutor abused his discretion in charging him with fleeing and eluding under the Vehicle Code, a five-year felony, instead of fleeing and eluding under § 81146 of the Natural Resources and Environmental Protection Act, MCL 324.81146, which makes it a misdemeanor for an operator of an ORV to flee or elude a law enforcement officer.

A prosecutor, as the chief law enforcement officer of a county, is granted the broad discretion to decide whether to prosecute and what charges to file. *People v Anterio Williams*, 244 Mich App 249, 253; 625 NW2d 132 (2001). This discretion is grounded in the responsibility of the executive branch to enforce the laws. *People v Conat*, 238 Mich App 134, 149; 605 NW2d 49 (1999). The principle of separation of powers therefore restricts judicial interference with the prosecutor's exercise of this discretion. *In re Hawley*, 238 Mich App 509, 512; 606 NW2d 50 (1999). Judicial review of the decision regarding what charges to file is thus limited to whether an abuse of power occurred, i.e., whether the charging decision was made for reasons that are unconstitutional, illegal, or ultra vires. *Conat*, *supra* at 149; *People v Barksdale*, 219 Mich App 484, 487-488; 556 NW2d 521 (1996).

* Circuit judge, sitting on the Court of Appeals by assignment.

Defendant argues that he should have been charged under the ORV statute because it is the more specific provision in that it governs the operation of ORVs in particular. A similar argument was rejected in *People v O'Neal*, 198 Mich App 118; 97 NW2d 535 (1993). There, the defendant drove an ORV while intoxicated and was charged under the OUIL provisions of the Vehicle Code rather than a comparable provision of the ORV Act, now 324.81101 *et seq.* *O'Neal* at 119. This Court held that the defendant could be charged under either statute because the statutes could be read in *pari materia* “in that the ORV statute regulates the operation of an ORV both on and off a highway by one who is intoxicated and the OUIL statute supplements those regulations when an ORV, a vehicle under the Michigan Vehicle Code, is operated on a highway by an intoxicated person.” *Id.* at 122. Similarly, MCL 324.81146 governs fleeing and eluding on an ORV both on and off a highway, and the Vehicle Code supplements that law when an ORV operator flees and eludes on a highway.

Defendant acknowledges *O'Neal*, but argues that it is distinguishable because the statutes at issue in that case carried the same penalties. However, it is within the prosecutor’s discretion to choose between applicable misdemeanor and felony statutes when charging a defendant, as long as there is no proof of invidious discrimination by the prosecutor. *People v Ford*, 417 Mich 66, 88-89; 331 NW2d 878 (1982). Furthermore, the sentencing implications of the charging decision do not invade power of the judiciary. *Conat, supra* at 150-151.

Defendant does not claim that the prosecutor’s charging decision was unconstitutional, illegal, or ultra vires, and there is nothing in the record suggesting that the decision was in violation of that standard. The decision was consistent with the case law, *O'Neal, supra, Ford, supra*, and there is no evidence that defendant was subjected to a felony charge because of his race or for any other discriminatory reason. The narrow standard of review under the separation of powers doctrine forbids this Court from second-guessing whether the prosecutor had a rational basis or good reason for charging defendant under the Vehicle Code rather than the Natural Resources and Environmental Protection Act. See *Barksdale, supra* at 488. Because there is no indication that the prosecutor abused his power, we decline to reverse.

Affirmed.

/s/ Patrick M. Meter

/s/ Kathleen Jansen

/s/ Roy D. Gotham