

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

BRUCE DEWAYNE DERR,

Defendant-Appellee.

UNPUBLISHED
February 26, 2009

No. 283985
Wayne Circuit Court
LC No. 08-000788-FH

Before: Donofrio, P.J., and K. F. Kelly and Beckering, JJ.

PER CURIAM.

The prosecutor appeals as of right the trial court's order quashing the information charging defendant with operating a vehicle under the influence of intoxicating liquor (OUIL), third offense, MCL 257.625(9)(c), and dismissing the case. Because the amendment of MCL 257.625(9)(c) eliminating a ten year time frame for enhancement of the offense of OUIL for post amendment offenses does not violate the constitutional provisions against ex post facto laws, we reverse and remand for reinstatement of the charge and further proceedings. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

On November 16, 2007, defendant was arrested and charged with OUIL. Defendant had been convicted of operating a vehicle while impaired in 2000, and of operating a vehicle under the influence of intoxicating liquor in 1981. On that basis, the prosecutor charged defendant with OUIL, third offense.

Defendant moved to quash the information, arguing that the application of the amended version of MCL 257.625(9)(c) to allow use of the 1981 conviction to charge him with OUIL, third offense, violated the ex post facto clauses of the United States and Michigan Constitutions, US Const, art I, § 10, cl 1; Const 1963, art 1, § 10, because it increased the punishment for acts that occurred in the past. The trial court granted the motion and dismissed the case. We review issues of statutory construction and interpretations of constitutional provisions de novo. *People v Callon*, 256 Mich App 312, 315; 662 NW2d 501 (2003).

Under MCL 257.625(9)(c) as it read prior to January 3, 2007, a defendant was guilty of felony drunk driving if he had been convicted of two or more drunken-driving related offenses within the previous ten years. 2006 PA 564, effective January 3, 2007,¹ amended MCL 257.625(9)(c) to remove the ten-year time frame. Now, the statute provides that a person who has been convicted of two or more drunken-driving related offenses may be convicted of a felony on committing a third offense, regardless of when the previous convictions occurred.

In *People v Perkins and People v Lesage*, 280 Mich App 244; ___ NW2d ___ (2008), this Court considered and rejected the argument adopted by the trial court in this case. The *Perkins* Court noted that an ex post facto law attaches legal consequences to acts that occurred before the law became effective, and thus prejudices a criminal defendant. *Id.* at 251. However, the *Perkins* Court reasoned that 2006 PA 564 does not attach legal consequences to acts that occurred prior to the date of its enactment, but rather permits enhancement of drunken-driving related offenses that occur after the date of its enactment. The *Perkins* Court held that 2006 PA 564 does not violate the constitutional provisions against ex post facto laws. *Id.* at 251-252. Because *Perkins* constitutes binding precedent that this Court must follow, MCR 7.215(C)(2), the prosecutor is entitled to relief.

We reverse the trial court's decision and remand this matter to the trial court for reinstatement of the charge of OUIL, third offense, against defendant, and for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Pat M. Donofrio
/s/ Kirsten Frank Kelly
/s/ Jane M. Beckering

¹ This public act is also known as "Heidi's Law."