

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT WILLIAM MILLER,

Defendant-Appellant.

UNPUBLISHED

May 28, 2009

No. 284351

Washtenaw Circuit Court

LC No. 07-001078-FH

Before: Jansen, P.J., and Hoekstra and Markey, JJ.

MEMORANDUM.

Defendant was convicted, following a bench trial, of operating a motor vehicle while under the influence of a controlled substance, third offense, MCL 257.625(1)(a) and (9)(c). The trial court sentenced defendant to serve two years' probation, with the first 30 days in jail. Defendant appeals by right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant's earlier convictions for purposes of finding him a third-time offender under MCL 257.625(9)(c) include one dating from 1995. Defendant's sole argument on appeal is that the trial court erred in rejecting his argument that that conviction should have been excluded for that purpose because it occurred more than ten years before the statutory amendment that removed a ten-year limitation on use of such convictions. See 2006 PA 564. Defendant argues that application of the current version of the statute, with no such time limitation, in this instance constitutes impermissible imposition of ex post facto law. See US Const, art I, § 10, cl 1; Const 1963, art 1, § 10; *People v Potts*, 436 Mich 295, 301; 461 NW2d 647 (1990) (a party seeking relief from ex post facto law must establish that the law operates retrospectively, and to that party's disadvantage).

This Court reviews constitutional questions de novo. *People v Callon*, 256 Mich App 312, 315; 662 NW2d 501 (2003). But this particular question has been authoritatively answered. Shortly after defendant filed his brief on appeal, this Court issued *People v Perkins*, 280 Mich App 244; 760 NW2d 669 (2008), which addressed precisely the issue defendant here raises and resolved it in the prosecutor's favor. This Court held that the defendants in that case, who were situated as is defendant in this case, "are not being prosecuted for the prior offenses," but were "being prosecuted for actions that took place after the amendment took effect," adding, "the change in the predicate offenses used to raise current conduct to a felony level does not constitute an ex post facto violation." *Id.* at 252. This Court further noted that the statutory

amendment did not attach legal consequences to earlier impaired-driving convictions, but instead attached legal consequences to conduct taking place after the effective date of the amendment. *Id.* 251-252, quoting *Callon, supra* at 318. Our Supreme Court summarily affirmed *Perkins* in lieu of granting leave to appeal. 482 Mich 1118; 758 NW2d 280 (2008).

The effective date of the amended MCL 257.625 was January 3, 2007. *Perkins, supra* at 245. The offense for which defendant was convicted and sentenced in the instant case took place on April 7, 2007. Accordingly, defendant was properly convicted and sentenced as a third-time offender under subsection (9)(c).

We affirm.

/s/ Kathleen Jansen
/s/ Joel P. Hoekstra
/s/ Jane E. Markey