

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of BRET AMOND YEE, Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellant,

v

BRET AMOND YEE,

Respondent-Appellee.

UNPUBLISHED

March 11, 2010

No. 288918

Macomb Circuit Court

Family Division

LC No. 99-4815711-DL

Before: Servitto, P.J., and Bandstra and Fort Hood, JJ.

PER CURIAM.

In 2000, then 13-year old respondent pleaded no contest to one count of indecent exposure, MCL 750.335a, and was placed on probation until further order from the court. In February 2008, at the age of 21, respondent filed an application to set aside his juvenile adjudication pursuant to MCL 712A.18e. The trial court granted the application. The prosecution appeals by delayed leave granted from the trial court's order granting respondent's application. We reverse. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The prosecution's sole argument on appeal is that the trial court erred in granting respondent's application to set aside his juvenile adjudication where respondent did not satisfy the age requirement of the juvenile set aside statute. We agree. Statutory interpretation and application is a question of law that this Court reviews de novo. *People v Stone Transport, Inc.*, 241 Mich App 49, 50; 613 NW2d 737 (2000).

The juvenile set aside statute provides, in pertinent part, that "a person who has been adjudicated of not more than 1 juvenile offense and who has no felony convictions may file an application with the adjudicating court for the entry of an order setting aside the adjudication." MCL 712A.18e(1). "[I]f the court determines that the circumstances and behavior of the applicant from the date of the applicant's adjudication to the filing of the application warrant setting aside the adjudication and that setting aside the adjudication is consistent with the public welfare, the court may enter an order setting aside the adjudication." MCL 712A.18e(9). The set aside statute further places some limitations on those who are eligible to apply for a set aside, one of which provides as follows:

An application under this section shall not be filed until the expiration of 5 years following imposition of the disposition for the adjudication that the applicant seeks to set aside, or 5 years following completion of any term of detention for that adjudication, or when the person becomes 24 years of age, whichever occurs later. [MCL 712A.18e(3).]

At the time that respondent applied to set aside his juvenile adjudication, at least five years had expired since imposition of the disposition. Moreover, no term of detention had been imposed. However, respondent was only 21 years old at the time that he applied for a set aside, while the statute requires a minimum age of 24. Pursuant to the plain language of MCL 712A.18e(3), respondent was not entitled to apply for a set aside.

The trial court granted respondent's motion to waive the age requirement and granted his accompanying application to set aside the adjudication. It accepted respondent's argument that good cause existed for a set aside because respondent had just graduated from Michigan State University and had done very well there as a political science major. Indeed, there is no indication in the record that respondent had anything but a clean record since his juvenile adjudication. The trial court also accepted respondent's position that the opposing side's failure to present authority for the proposition that a trial court is prohibited from waiving the age requirement was sufficient basis to waive the statute's age requirement.

The trial court's analysis is contrary to the rules of statutory construction. If a statute's language is clear and unambiguous, this Court assumes that the Legislature intended its plain meaning and the statute must be enforced as written. *People v Stone*, 463 Mich 558, 562; 621 NW2d 702 (2001). Respondent does not dispute that the juvenile set aside statute's age requirement is clear and unambiguous. In light of the clear and unambiguous nature of the challenged statutory provision, the trial court was obligated to enforce it. See *In re Hutchinson*, 278 Mich App 108, 110, 112-113; 748 NW2d 604 (2008) (holding that where the juvenile set aside statute clearly and unambiguously limits its application to those who have been adjudicated responsible of only one offense, the trial court is obligated to enforce the statute as written and deny a set aside to those with more than one offense). The aforementioned basic tenet of statutory construction supports a finding that the trial court was not permitted to read into the statute the possibility of a waiver. See *People v Haynes (On Remand)*, 281 Mich App 27, 29; 760 NW2d 283 (2008) (observing that a court may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself). Respondent fails to present any authority for the claim that a trial court may waive a clear and unambiguous statutory requirement.

Even assuming that there are exceptional circumstances where waiver of a statutory requirement would be permitted, respondent fails to demonstrate that his case would fall into such a category. To justify the waiver, respondent relies on (1) good cause provided by his having graduated college and done well there, and (2) opposing counsel's failure to present authority that a court may not waive a statutory requirement. We are not persuaded that respondent's arguments are sufficient to justify a waiver. There is nothing unique or particularly compelling about respondent's situation, nor has respondent shown that he would suffer undue hardship if his adjudication is not set aside by his 24th birthday. Respondent will be eligible to file another application to set aside his adjudication on his upcoming 24th birthday, which is on April 29, 2010.

In sum, because respondent was not entitled to file an application to set aside his adjudication since he did not meet the statutory age requirement, the trial court erred in granting respondent's application to set aside his adjudication.¹ Also, in light of the basic guiding principle that courts must enforce unambiguous statutes as written, and because respondent failed to demonstrate exceptional circumstances entitling him to a waiver, the trial court erred in granting respondent's motion to waive the statute's age requirement.

Reversed. We do not retain jurisdiction.

/s/ Deborah A. Servitto
/s/ Richard A. Bandstra
/s/ Karen M. Fort Hood

¹ The prosecution offers an additional basis upon which to reverse the trial court's order. The prosecution argues that the trial court lacked subject matter jurisdiction over respondent's case because of respondent's failure to meet the statutory criteria for applying for a set aside. Given that we are granting the prosecution the relief it requests, it is unnecessary to reach this argument.