

RENDERED: August 2, 1996; 2:00 p.m.
NOT TO BE PUBLISHED

NO. 95-CA-0819-MR

ROBERT MARTIN

APPELLANT

v.

APPEAL FROM LAUREL CIRCUIT COURT
HONORABLE RODERICK MESSER, JUDGE
ACTION NO. 94-CR-083

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
REVERSING AND REMANDING

* * * * *

BEFORE: DYCHE, JOHNSON and KNOPF, Judges.

KNOPF, JUDGE: This is an appeal of a conviction in Laurel Circuit Court for driving under the influence, fourth offense, pursuant to KRS 189A.010. Based upon recent decisions by the Supreme Court of Kentucky, we reverse and remand for a new trial.

The appellant, Robert Martin, was indicted on the charge of driving under the influence (DUI), fourth offense. Prior to trial, the appellant moved to exclude any reference to his prior convictions during the Commonwealth's case-in-chief. The trial court overruled the motion. Following a jury trial, the appellant was convicted on the charge. This appeal follows.

The Supreme Court of Kentucky recently addressed this issue in three (3) cases: Commonwealth v. Ramsey, Ky., 920 S.W.2d 526 (1996); O'Bryan v. Commonwealth, Ky., 920 S.W.2d 529 (1996); and Dedic v. Commonwealth, Ky., 920 S.W.2d 878 (1996). The Supreme Court noted that the elements for the offense of driving under the influence are wholly contained in KRS 189A.010(1). On the other hand, the penalties are delineated in subsection (4), with the severity of punishment increasing with the number of prior violations of subsection (1). Ramsey, 920 S.W.2d at 528. The Supreme Court held that evidence of prior convictions are not essential to the Commonwealth's case-in-chief in the prosecution of a DUI charge and introduction of the prior convictions is unduely prejudicial to the defendant. Consequently, the prior DUI convictions shall not be introduced during the guilt phase of a DUI trial, but are only admissible during the penalty phase. Id. at 529.

As a result of these decisions, the appellant's conviction for DUI, fourth offense, must be reversed and remanded for a new trial. At a subsequent trial of this action, if the jury reaches a guilty verdict, the circuit court has authority to conduct a penalty phase pursuant to KRS 532.055, in which the prior convictions may be introduced and the appropriate sentence determined, following proper instructions to the jury. Id. at 528.

Accordingly, the conviction for driving under the influence, fourth offense, is reversed, and this action is remanded for a new trial.

ALL CONCUR.

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