

Commonwealth Of Kentucky

Court Of Appeals

NO. 1996-CA-001837-MR
NO. 1997-CA-000183-MR

JEMOND RAYNARD GROVES

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE THOMAS J. KNOFF, JUDGE
ACTION NO. 96-CR-000953

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

APPEAL NUMBER 1996-CA-001837-MR

**AFFIRMING IN PART, REVERSING IN PART,
AND REMANDING WITH DIRECTIONS**

VACATING ORDER IN APPEAL NUMBER 1997-CA-000183-MR

** ** ** **

BEFORE: ABRAMSON¹, MILLER, and SCHRODER, JUDGES.

MILLER, JUDGE: Jemond Raynard Groves (Groves) brings Appeal Number 1996-CA-001837-MR from a June 17, 1996 judgment of the Jefferson Circuit Court which adjudged him guilty of one count first-degree robbery. Kentucky Revised Statute (KRS) 515.020.

¹Judge Abramson concurred in this opinion prior to leaving the Court on November 22, 1998.

Groves brings Appeal Number 1997-CA-000183-MR from a January 10, 1997 order of the Jefferson Circuit Court which denied him shock probation. KRS 439.265. We affirm in part, reverse in part, and remand with directions the judgment in Appeal Number 1996-CA-001837-MR; we vacate the order in Appeal Number 1997-CA-000183-MR.

Groves, a juvenile at sentencing, raises several issues in Appeal Number 1996-CA-001837-MR: (1) whether the 1994 amendments to the Kentucky Unified Juvenile Code (codified as KRS Chapters 600 - 645) unconstitutionally prescribe circuit court jurisdiction in violation of the Kentucky Constitution §§ 112(5) and 113(6); (2) whether KRS 635.020(4) and KRS 640.010(2) are irreconcilable; and (3) whether Groves was eligible for consideration of probation pursuant to the sentencing guidelines of KRS Chapter 640.

Groves's first argument was resolved by the Supreme Court of Kentucky in Commonwealth v. Halsell, Ky., 934 S.W.2d 552 (1996). Therein, the Court held that the 1994 amendments to the Unified Juvenile Code, making all juveniles fourteen years of age or older subject to trial in the circuit court as adult offenders, were constitutional:

Having reviewed KRS 635.020 in its entirety, we find that subsection (4) is within the Kentucky General Assembly's constitutional power to limit the jurisdiction of the district court under Kentucky Constitution Section 113(6). Following a determination of reasonable cause to believe a child over the age of 14 has been charged with a felony in which a firearm was used in the commission of the offense, KRS 635.020(4) operates to limit the jurisdiction of the district court to act further. By operation of Section 112(5) of the Kentucky Constitution, the circuit court

then becomes vested with jurisdiction as to that particular class of offenders.

Id. at 555.

The Supreme Court of Kentucky has also resolved Groves's second argument that KRS 635.020(4) and KRS 640.010(2) are irreconcilable. In Halsell, 934 S.W.2d at 556, the Court stated:

[W]e find that the provisions of KRS 640.010(2) can be harmonized with KRS 635.020(4). Whether it is determined at a preliminary hearing described in KRS 640.010(2) or prior to an adjudicatory hearing as described in KRS 635.020(1), once the district court has reasonable cause to believe that a child before the court has committed a firearm felony as described in subsection (4) of KRS 635.020, jurisdiction vests in the circuit court, the provisions of KRS 640.010(2)(b) and (c) to the contrary notwithstanding.

Groves's third argument is that he should have been eligible for probation under KRS 640.040(4). The Commonwealth contends that Groves is ineligible for probation. Groves and the Commonwealth entered into an agreement whereby Groves waived indictment and arraignment. The Commonwealth recommended a ten-year sentence and maintained that probation was statutorily prohibited. The circuit court rejected Groves's request for probation as being statutorily barred and as being otherwise unmeritorious. Groves reserved the right to appeal the denial of probation.

The Kentucky Supreme Court, in Britt v. Commonwealth, Ky., 965 S.W.2d 147, 150 (1998), held that

. . . juveniles transferred to circuit court pursuant to the 1994 version of KRS 635.020(4) are to be considered "youthful

offenders" eligible for the ameliorative sentencing provisions of KRS Chapter 640.

While the circuit court considered and rejected Groves's motion for probation on the merits, the circuit court record indicates that probation was also denied as statutorily barred. We believe Groves should receive a full and serious consideration for probation on the merits rather than a summary consideration thereof only after a determination that probation was statutorily impermissible. As such, Groves should be re-sentenced in accordance with KRS Chapter 640.

In Appeal Number 1997-CA-000183-MR, Groves contends that the circuit court erred by denying him shock probation. Based upon our decision that the circuit court must re-sentence Groves according to the precepts of KRS Chapter 640, we believe this issue is rendered moot. Should Groves be denied probation at re-sentencing, he may then file a motion for shock probation. Accordingly, we vacate the circuit court order denying Groves's shock probation.

For the foregoing reasons, the judgment in Appeal Number 1996-CA-001837-MR is affirmed in part, reversed in part, and remanded with directions to re-sentence Groves pursuant to the provisions of KRS Chapter 640.

The order in Appeal Number 1997-CA-000183-MR is vacated.

ALL CONCUR.

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