

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-002802-MR

ROY KENNETH ROBERTS

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE LEWIS G. PAISLEY, JUDGE
ACTION NO. 96-CR-01168

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING IN PART,
REVERSING IN PART, AND REMANDING

*** **

BEFORE: GUIDUGLI, MILLER, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: Roy Kenneth Roberts appeals from a judgment of the Fayette Circuit Court imposing an additional sentence of three years conditional discharge pursuant to KRS 532.043. As KRS 532.043 was improperly applied to Roberts, we reverse that portion of the judgment and remand for proceedings consistent with this opinion.

On December 3, 1996, Roberts was indicted for twelve counts of first-degree rape, for offenses committed between July and October of 1996. On March 3, 1997, Roberts entered a conditional guilty plea to two counts of the amended charge of

third-degree rape, with the Commonwealth recommending that the remaining counts be dismissed. On May 6, 1997, the court entered its final judgment and sentence of imprisonment, sentencing Roberts to five years on each of the two counts, with the sentences to run consecutively for a total of ten years' imprisonment. Roberts appealed to this Court, and, in an unpublished opinion, 1997-CA-001202-MR, made final on August 18, 2000, we affirmed in part, vacated in part, and remanded for resentencing. A resentencing hearing was held on September 29, 2000, at which the court sentenced Roberts to the same ten-year term as before. The court made no mention at the resentencing hearing of a term of conditional discharge per KRS 532.043. However, in the subsequent written final judgment and resentence of imprisonment, entered October 25, 2000, in addition to the ten-year term of imprisonment, the court imposed a three-year period of conditional discharge pursuant to KRS 532.043. This appeal followed.

On appeal, Roberts contends that KRS 532.043 is not applicable to his case, because his offenses occurred between July and October of 1996, his guilty plea was entered on March 3, 1997, and the effective date of KRS 532.043 was July 15, 1998. Hence, Roberts contends that the statute, as applied to his case, is an unconstitutional ex post facto law. The Commonwealth agrees on appeal that the period of conditional discharge imposed upon Roberts per KRS 532.043 is not valid.

As the court made no mention of KRS 532.043 at the September 29, 2000 sentencing hearing, this issue was not

preserved. Hence, we shall review Roberts's argument for palpable error per RCr 10.26. KRS 532.043, effective July 15, 1998, states, in pertinent part:

(1) In addition to the penalties authorized by law, any person convicted of, pleading guilty to, or entering an Alford plea to a felony offense under KRS Chapter 510 . . . shall be sentenced to a period of conditional discharge following release from:

(a) Incarceration upon expiration of sentence; or

(b) Completion of parole.

(2) The period of conditional discharge shall be three (3) years.

. . . .

(6) The provisions of this section shall apply only to persons convicted, pleading guilty, or entering an Alford plea after July 15, 1998.

Although Roberts was resentenced after the effective date of KRS 532.043, he pled guilty to the offenses at issue on March 3, 1997. Hence, per KRS 532.043(6), the provisions of the statute are not applicable to him. Further, in Purvis v. Commonwealth, Ky., 14 S.W.3d 21 (2000), the Kentucky Supreme Court held KRS 532.043 to be unconstitutional as an ex post facto law when applied to offenses committed before the effective date of the statute, July 15, 1998. The record shows that Roberts committed the offenses at issue between July and October of 1996. Accordingly, per the Kentucky Supreme Court's holding in Purvis, the application of KRS 532.043 to Roberts was unconstitutional.

For the aforementioned reasons, the judgment of the Fayette Circuit Court is affirmed in part, and reversed in part

as to that portion of the sentence which imposed the three-year conditional discharge pursuant to KRS 532.043, and remanded for the entry of a judgment consistent with this opinion.

ALL CONCUR.

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