

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-001444-MR

CHARLES E. BIGGERS

APPELLANT

v. APPEAL FROM HENDERSON CIRCUIT COURT
HONORABLE STEPHEN HAYDEN, JUDGE
ACTION NO. 00-CR-00108

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** **

BEFORE: EMBERTON, GUIDUGLI AND McANULTY, JUDGES.

GUIDUGLI, JUDGE. Charles E. Biggers (Biggers) appeals from the judgment of conviction entered by the Henderson Circuit Court on June 7, 2000, for operating a motor vehicle under the influence (DUI) third offense, with an alcohol concentration of 0.18 or above [KRS 189A.010(4)(c)].¹ Biggers entered a conditional plea of guilty pursuant to RCr 8.09. We affirm.

The sole issue in this appeal is whether KRS 189A.010(4)(c) is unconstitutional as it violates the Fifth, Eighth, and

¹Biggers also entered a guilty plea to possession of marijuana and received a concurrent twelve (12) month sentence. The plea to the marijuana charge was not appealed.

Fourteenth Amendments to the United States Constitution and Sections 2, 11, and 17 of the Kentucky Constitution. KRS 189A.010(4)(c) provides as follows:

(4) Any person who violates the provisions of paragraphs (1), (b), (c) or (d) of subsection (1) of this section shall:

....

(c) If the alcohol concentration is below 0.18, for a third offense within a five (5) year period, be fined not less than five hundred dollars(\$500) nor more than one thousand (\$1,000) and shall be imprisoned in the county jail for not less than thirty (30) days nor more than twelve (12) months and may, in addition to fine and imprisonment, be sentenced to community labor for not less than ten (10) days nor more than twelve (12) months. If the alcohol concentration is 0.18 or above, he or she shall be guilty of a Class D felony. (Emphasis added).

Biggers' contention that KRS 189A.010(4)(c) is unconstitutional has been recently addressed by this Court. The cases of Cornelison v. Commonwealth, Appeal No. 1999-CA-001825-MR, a to-be-published opinion rendered July 7, 2000, motion for discretionary review granted December 13, 2000 (47 Ky. L. Sum. 7 (2000)) and Barker v. Commonwealth, Appeal No. 1999-CA-000500-MR, an unpublished opinion rendered September 29, 2000 (47 Ky. L. Sum. 11 (2000)), rejected a similar constitutional challenge aimed at KRS 189A.010(4)(c). Both Cornelison and Barker discussed the claims raised herein that the DUI statute is arbitrary, capricious and unreasonable legislation. We believe both Cornelison and Barker are dispositive on this issue and that Biggers has failed to maintain his burden of establishing that

KRS 189A.010(4)(c) is unconstitutional. See Commonwealth v. Howard, Ky., 969 S.W.2d 700 (1998).

The judgment entered by the Henderson Circuit Court is affirmed.

ALL CONCUR.

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