

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-002554-MR

RICHARD E. GRIDER

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE ANN O'MALLEY SHAKE, JUDGE
INDICTMENT NO. 98-CR-003090

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** **

BEFORE: BARBER, DYCHE, AND MILLER, JUDGES.

DYCHE, JUDGE: Richard Grider was arrested in Jefferson County on September 18, 1998, and charged with reckless driving and driving under the influence, third offense. A breathalyzer test revealed a blood alcohol concentration level of 0.23. KRS 189A.010(4)(c), the pertinent provision of the driving under the influence statute, was amended in 1998. The version in effect at the time of Grider's arrest stated that "for a third offense within a five (5) year period, . . . [i]f the alcohol concentration is 0.18 or above," the offense was a class "D" felony. Grider entered a conditional guilty plea to the charges on September 24, 1999, reserving the right to challenge the constitutionality of the

statute and to challenge the trial court's denial of his suppression motion. The Kentucky Supreme Court recently ruled that the 1998 amendments to KRS 189A.010 were constitutional. Cornelison v. Commonwealth, Ky., 52 S.W.3d 570 (2001).

Prior to the rendition of Cornelison, the Legislature again amended KRS 189A.010. Third-time offenders are no longer subject to felony sanctions, even if their blood alcohol concentration is greater than 0.18. Instead, a third-time offender whose blood alcohol concentration is greater than 0.18 is subject to enhanced misdemeanor penalties. KRS 189A.010(5)(c) & (11). The amended statute became effective on October 1, 2000.

Following his May 30, 2000, arrest for probation violation, Grider filed a CR 60.02 motion with the Jefferson Circuit Court, seeking to have the judgment of conviction and sentence set aside as inequitable in light of the 2000 amendments to the statute, and requesting that the court allow him to enter his plea of guilty under the amended statute. The motion was denied, and this appeal followed. Grider cites no Kentucky authority in support of his request for retroactive application of the 2000 amendments, and plainly ignores the weight of authority against him. KRS 446.080(3) states that "[n]o statute shall be construed to be retroactive, unless expressly so declared," and KRS 446.080(2) states that "[t]here shall be no difference in the construction of civil, penal, and criminal statutes." Kentucky courts have consistently followed these rules of construction. See University of Louisville v. O'Bannon, Ky., 770 S.W.2d 215, 216 (1989); White v. Commonwealth, Ky. App.,

32 S.W.3d 83, 86 (2000). KRS 189A.010, as amended in 2000, is silent on the question of retroactive application. We therefore conclude that the Legislature intended the statute to have only prospective application. The trial court properly denied his CR 60.02 motion. See Land v. Commonwealth, Ky., 986 S.W.2d 440 (1999).

The judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

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