

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-001569-MR

JEFFREY A. DENNISON

APPELLANT

V. APPEAL FROM McLEAN CIRCUIT COURT
HONORABLE DAVID H. JERNIGAN, JUDGE
ACTION NO. 01-CR-00007

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION AFFIRMING

* * * * *

BEFORE: EMBERTON, Chief Judge; BUCKINGHAM and GUDGEL, Judges.

GUDGEL, JUDGE: This is an appeal from a judgment entered by the McLean Circuit Court. Appellant was convicted of the felony offense of fleeing or evading police in the first degree, and he was sentenced to five years' imprisonment. On appeal, appellant contends that his conviction should be set aside under the palpable error rule because, even though his trial counsel stipulated otherwise, the record in fact shows that he did not meet statutory requirements regarding having his license suspended for driving while intoxicated at the time he attempted to flee police. As we disagree with appellant's argument, we affirm.

It is undisputed that appellant operated a friend's vehicle with an intent to flee or evade police. He was charged with violating KRS 520.095, which requires proof of the intent to flee or evade police while operating a motor vehicle, as well as proof of one of four conditions including, as alleged here, that he was driving while his driver's license already was suspended for DUI. See KRS 520.095(1)(a)(3); KRS 189A.010.

Although appellant's trial counsel stipulated that this applicable condition existed, counsel on appeal contends that the driving record included in the appendix to appellant's brief establishes otherwise, and that we therefore should grant him relief under the palpable error rule. See RCr 10.26. We find no merit in this argument.

Appellant's driving record shows that on October 18, 1997, he was charged with driving while suspended for DUI first offense and driving while intoxicated third offense. He was convicted of both offenses on October 29. In regard to the conviction for DUI third offense, a suspension order was issued for the period from October 29, 1997, to October 29, 1999. In regard to the conviction for driving while suspended for DUI, a separate suspension order was issued for the period from October 29, 1997, to October 29, 2001.

Obviously, appellant could not have been convicted in 1997 of first-offense driving while suspended for DUI unless his license was already under suspension for an earlier DUI offense when he was arrested for DUI third in 1997. Moreover, although his 1997 suspension for DUI third offense expired in 1999, his

separate suspension for first-offense driving while suspended for DUI was still in full force and effect when he was arrested in 2000 for attempt to flee or evade. Thus, contrary to appellant's contention, the record shows that on the date of his 2000 arrest, appellant's license was in fact suspended for a violation of KRS 189A.010. It follows that no palpable error occurred when appellant's trial counsel stipulated that fact at trial.

The court's judgment is affirmed.

ALL CONCUR.

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