

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-001804-MR

JERRY TACKETT

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE THOMAS L. CLARK, JUDGE
INDICTMENT NO. 01-CR-00182

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** **

BEFORE: COMBS, DYCHE, AND KNOPF, JUDGES.

DYCHE, JUDGE: On January 1, 2001, at 2:30 p.m., Jerry Wayne Tackett was involved in an injury accident in Lexington, Kentucky. According to the police report, Tackett had rear-ended another vehicle that had stopped to avoid a stalled car. Tackett had open beer cans in his car and had in fact spilled all over himself the contents of the can he had in his lap. He honestly advised the police officer that he had had too much to drink and stated "take me to jail." Tackett refused all but one field sobriety test and later refused the Intoxilizer test when taken to jail.

Tackett was arrested and the following month indicted for operating a motor vehicle under the influence (DUI), second offense (Kentucky Revised Statute [KRS] 189A.010), operating a motor vehicle on a license suspended for driving under the influence, second offense (KRS 189A.090), no insurance (KRS 304.39-080), and persistent felony offender (PFO) in the first degree (KRS 532.080). On March 27, 2001, Tackett filed a "motion to dismiss and/or to declare KRS 189A.090 and 532.080 unconstitutional." The Fayette Circuit Court denied this motion on March 25, 2001. Two days later Tackett entered a conditional plea of guilty (Kentucky Rule of Criminal Procedure 8.09) to the indicted offenses (except for no insurance). He was sentenced to a total of ten years' imprisonment. Tackett was granted this belated appeal.

Tackett's sole argument before this Court is that "Kentucky Revised Statute 189A.090 is unconstitutional when used in tandem with Kentucky Revised Statute 532.080." Tackett attacks the statute as arbitrary and not rationally related to a legitimate legislative purpose, as doubly enhancing, and as disproportionately punishing an offense which would otherwise be a Class B misdemeanor.

Unfortunately for appellant the law and the trial court record do not support his positions. Tackett has failed in his burden of demonstrating the statute's unconstitutional applications. See Cornelison v. Commonwealth, Ky., 52 S.W.3d 570, 573-574 (2001). Contrary to Tackett's assertions, there was no double enhancement. The record clearly indicates that the

current DUI offense was enhanced by a prior conviction from 1996. The felony convictions used to support the PFO I were from 1993 and 1983. Cf. Corman v. Kentucky, Ky., 908 S.W.2d 122, 123 (1995). As for the disproportionate sentence, the record indicates that this is (at the least) Tackett's sixth DUI conviction, and he has the two prior felonies. As the Commonwealth asserts, Tackett is a persistent recidivist, and should be punished accordingly. See Harrison v. Commonwealth, Ky., 858 S.W.2d 172 (1993).

The judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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