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SUPREME COURT GRANTED DISCRETIONARY REVIEW:
FEBRUARY 11, 2009
(FILE NO. 2008-SC-0895-DG)

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-000690-MR

BRANDI R. CHIPMAN

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT
HONORABLE GREGORY M. BARTLETT, JUDGE
ACTION NO. 06-CR-00539

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** *

BEFORE: KELLER AND WINE, JUDGES; LAMBERT,¹ SENIOR JUDGE.

¹ Senior Judge Joseph E. Lambert sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

KELLER, JUDGE: The issue presented is the proper disposition of a juvenile who was charged with Robbery in the First Degree,² was transferred to circuit court as a youthful offender, and pled guilty to the lesser offense of Robbery in the Second Degree.³ For the reasons set forth below, we affirm.

FACTS

While the record is not clear, the following is the Court's interpretation of the facts based on the limited record and the briefs of the parties. The facts are not necessarily dispositive to the issue, but are necessary to understand how this case evolved. Brandi R. Chipman (Chipman), a seventeen-year-old girl with no prior criminal history, was charged with the robbery of Brandon Vest (Vest). Chipman purchased \$30 worth of marijuana from Vest, but because she did not have \$30, she gave Vest her digital camera as collateral for the "loan." When Chipman came forward with the money, Vest refused to return the camera. Chipman claimed she was afraid of Vest, so she asked three adult males, who later became co-defendants, to help her recover the camera.

Chipman and the co-defendants entered an apartment where Vest was present with at least one other person.⁴ One of the co-defendants had a gun in his possession. A struggle soon ensued and one (or more) of the co-defendants

² Robbery in the first degree is a Class B felony in which an aggravating factor is present, such as use of a firearm, in the commission of the offense. Kentucky Revised Statute (KRS) 515.020.

³ Robbery in the second degree is a Class C felony in which the use or threat of immediate use of physical force is used in the commission of the offense.

⁴ It is unclear who the tenant of the apartment was.

pepper-sprayed and struck either Vest or his companion with the gun. Various items were taken from the apartment during this incident.

Chipman was arrested and charged with Robbery in the First Degree, Burglary in the First Degree, and Assault in the Second Degree. After a hearing, the district court transferred Chipman to circuit court, where she was indicted on the three charges. Chipman pled guilty to Robbery in the Second Degree in exchange for the Commonwealth's recommendation of an eight-year sentence and dismissal of the other charges. After some discussion, Chipman's counsel and the Commonwealth agreed that Chipman should be sentenced as a juvenile, not as a youthful offender. However, the circuit court disagreed and sentenced Chipman as a youthful offender to sixty-one months' imprisonment based on its interpretation of the statutory language of KRS 635.020(4). The court permitted Chipman's counsel to amend her earlier plea to a conditional guilty plea to allow this appeal. On appeal, Chipman argues that the circuit court did not have subject matter jurisdiction over this action because she was a juvenile and that she should have been sentenced as a juvenile.

STANDARD OF REVIEW

Whether the trial court has acted outside its jurisdiction and whether Chipman should have been sentenced as a juvenile are questions of law. Therefore, the standard of review is *de novo*. *Grange Mutual Insurance Co. v. Trude*, 151 S.W.3d 803, 810 (Ky. 2004). With this standard in mind, we will address the issues raised by Chipman.

ANALYSIS

Chipman argues that the circuit court did not have subject matter jurisdiction over her when it sentenced her for Robbery in the Second Degree. For the following reasons, we disagree and affirm the circuit court's ruling.

KRS 635.020 is the governing authority in determining whether a person under the age of eighteen is to be tried as a juvenile or a youthful offender.

The applicable language of the statute for this appeal is

[a]ny other provision of KRS Chapters 610 to 645 to the contrary notwithstanding, if a child charged with a felony in which a firearm, whether functional or not, was used in the commission of the offense had attained the age of fourteen (14) years at the time of the commission of the alleged offense, he shall be transferred to the Circuit Court for trial as an adult if, following a preliminary hearing, the District Court finds probable cause to believe that the child committed a felony, that a firearm was used in the commission of that felony, and that the child was fourteen (14) years of age or older at the time of the commission of the alleged felony. If convicted in the Circuit Court, he shall be subject to the same penalties as an adult offender, except that until he reaches the age of eighteen (18) years, he shall be confined in a facility or program for juveniles or for youthful offenders, unless the provisions of KRS 635.025 apply or unless he is released pursuant to expiration of sentence or parole, and at age eighteen (18) he shall be returned to the sentencing Circuit Court for proceedings consistent with KRS 640.030(2).

KRS 635.020(4).

The first step in this analysis is to determine if Chipman should have been transferred to circuit court. As set forth above, if the charge is a felony in

which a firearm was used in the commission of the offense, the juvenile will automatically be transferred to circuit court from district court.

One of Chipman's co-defendants had a firearm at the robbery, which he used to strike one of the individuals present in the apartment. Therefore, a firearm was used in the commission of the felony offense. The district court properly transferred Chipman to the circuit court pursuant to the statutory language of KRS 635.020(4) as it found probable cause to believe that Chipman had committed a felony; that a firearm was used in the commission of that felony; and that Chipman was at least fourteen years of age at the time.

Since Chipman pled guilty to the lesser offense of Robbery in the Second Degree, the next step is to determine whether Chipman should have been sentenced as a juvenile under KRS 635.060 or as a youthful offender under KRS 640.030(2). The statutory language of KRS 635.020(4) states "[i]f convicted in the Circuit Court, [s]he shall be subject to the same penalties as an adult offender[.]" Notably, it does not say "if convicted of the offense charged," but only "[i]f convicted." When interpreting a statute, the court is to assume that the General Assembly intended the statute to mean exactly what it says. *Revenue Cabinet v. O'Daniel*, 153 S.W.3d 815, 819 (Ky. 2005). Therefore, this Court presumes "[i]f convicted in the Circuit Court" means exactly what it says. Here, Chipman pled guilty in the circuit court, which equates to a conviction. Based on the plain language of KRS 635.020(4), Chipman is subject to the same penalties as an adult offender, including an eight year sentence.

Under the language of KRS 635.020(4), Chipman should have been, and was, confined in a facility for juveniles or youthful offenders until she reached the age of eighteen years. Upon attainment of the age of eighteen, Chipman should have been, and was, returned to the sentencing court for proceedings consistent with KRS 640.030(2). At that point, the court had the option of making one of the following determinations:

- (a) Whether the youthful offender shall be placed on probation or conditional discharge;
- (b) Whether the youthful offender shall be returned to the Department of Juvenile Justice to complete a treatment program, which treatment program shall not exceed the youthful offender's attainment of the age of eighteen (18) years and five (5) months. At the conclusion of the treatment program, the individual shall be returned to the sentencing court for a determination under paragraph (a) or (c) of this subsection; or
- (c) Whether the youthful offender shall be incarcerated in an institution operated by the Department of Corrections[.]

KRS 640.030(2). Again, this is the procedure the circuit court followed and we see no fault in its findings and determinations.

Chipman argues that she should have been sentenced pursuant to KRS 640.040(4), which states

[a]ny youthful offender convicted of a misdemeanor or any felony offense which would exempt him from KRS 635.020(2), (3), (4), (5), (6), (7), or (8) shall be disposed of by the Circuit Court in accordance with the provisions of KRS 635.060.

If KRS 635.020(4) exempted Chipman, then she would have been sentenced as a juvenile. However, as we have previously determined, because a gun was used in the commission of the crimes and Chipman was convicted by the circuit court, she falls within the purview of KRS 635.020(4). Chipman's plea to a lesser offense does not exempt her from the sentencing provision of that statute. Therefore, she was properly sentenced as an adult.

Chipman also argues that pursuant to *Canter v. Commonwealth*, 843 S.W.2d 330 (Ky. 1992), she should have been sentenced in accordance with the provisions of KRS 635.060. Canter was charged with murder in connection with the death of her infant son. She was transferred to the circuit court as a youthful offender, and the grand jury indicted her as a youthful offender pursuant to KRS 635.020(2) for Murder and Criminal Abuse in the First Degree. However, a jury convicted Canter of Criminal Abuse in the First Degree, a Class C felony, and the court sentenced her pursuant to KRS 640.030 as a youthful offender. Canter appealed, claiming she should have been sentenced under KRS 635.060, the juvenile sentencing statute. The Supreme Court agreed because KRS 635.020(2) states that

[i]f a child charged with a capital offense, Class A felony, or Class B felony, had attained age fourteen (14) at the time of the alleged commission of the offense, the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.

Because Canter was convicted of a Class C Felony, the preceding statutory provision did not apply. Therefore, the Court held that Canter should have been sentenced under KRS 635.060, the juvenile sentencing statute.

Chipman's case is distinguishable from *Canter* because the firearms provision in KRS 635.020(4) applies to Chipman whereas it did not apply to *Canter*. Furthermore, KRS 635.020(4) provides that if convicted in circuit court, a youthful offender should be sentenced as an adult. This applies to Chipman, whereas KRS 635.020(2), which applied to *Canter*, did not provide for adult sentencing for conviction of a Class C Felony.

CONCLUSION

Based on the statutory language of KRS 635.020(4), we hold that the Kenton Circuit Court had subject matter jurisdiction over Chipman and that Chipman's sentencing as an adult was proper. Therefore, we affirm the Kenton Circuit Court.

ALL CONCUR.

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