

Commonwealth of Kentucky

Court of Appeals

NO. 2005-CA-001362-MR

CORDERO WILBANKS

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE LISABETH HUGHES ABRAMSON, JUDGE
ACTION NO. 04-CR-002444

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION VACATING AND REMANDING

** ** * * * * *

BEFORE: COMBS, CHIEF JUDGE; GUIDUGLI AND HENRY, SENIOR JUDGES.¹

COMBS, CHIEF JUDGE: Cordero Wilbanks appeals from a judgment of the Jefferson Circuit Court ordering him to serve the remainder of a ten-year sentence that he received before he reached the age of eighteen years. We vacate and remand.

¹ Senior Judges Daniel T. Guidugli and Michael L. Henry sitting as Special Judges by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580. Both Judge Guidugli and Judge Henry were assigned to this case prior to their status as Senior Judges.

Wilbanks received a ten-year sentence for robbery in the first degree, assault in the second degree, and burglary in the first degree. Since he was a juvenile at the time of the offense, Wilbanks was transferred to circuit court as a youthful offender pursuant to KRS² 635.020(4). That statute requires that offenses committed by a juvenile with the use of a firearm be transferred to circuit court. A re-sentencing hearing was held when Wilbanks reached eighteen years of age. The circuit court determined that Wilbanks was statutorily ineligible for probation.

This case presents the same issue as was considered in *Hickman v. Commonwealth*, 2005-CA-000640-MR. In *Hickman*, this court analyzed KRS 640.030, which requires a court to consider **three options** -- including probation -- at an age-of-majority hearing. It also analyzed KRS 439.3401(1), which prohibits probation for persons convicted of certain violent offenses -- such as those committed by Wilbanks as a juvenile. As in the case before us, *Hickman* involved a conflict between the two statutes, which we resolved by holding that KRS 640.030 should prevail over KRS 439.340(1).

In 2006, the Supreme Court of Kentucky granted discretionary review to resolve a conflict between *Hickman* and another case involving the same issue. We held Wilbanks's case in abeyance pending a Supreme Court decision in those cases. The Supreme Court of Kentucky consolidated the cases, and in *Commonwealth v. Merriman*, ___ S.W.3d ___ (Ky 2008), 2008 WL4286508, the court affirmed our holding in *Hickman*.

² Kentucky Revised Statutes.

Therefore, we hold that the court erred in failing to follow the requirement of KRS 640.030 that it consider all three options -- including probation -- at Wilbanks's hearing upon reaching majority. We direct that the circuit court order a new majority hearing in order to consider all of the three options required by KRS 640.030.

We vacate the judgment of the Jefferson Circuit Court and remand for further proceedings consistent with this opinion.

ALL CONCUR.

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