

Commonwealth of Kentucky
Court of Appeals

NO. 2016-CA-001478-MR

RODNEY MATTHEW ESTEPP

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE KIMBERLY N. BUNNELL, JUDGE
ACTION NO. 16-CR-00466

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, DIXON, AND K. THOMPSON, JUDGES.

ACREE, JUDGE: Rodney Esteppe appeals an order from the Fayette Circuit Court denying his motion challenging the application of the ten-year look-back period contained in the amended KRS¹ 189A.010 to enhance his driving under the

¹ Kentucky Revised Statutes.

influence (DUI) charge to a felony fourth offense. Estep entered a conditional guilty plea to the DUI, fourth offense, among other offenses, reserving his right to appeal. For the reasons set forth below, we affirm.²

FACTS AND PROCEDURE

Estep was arrested on May 24, 2016 and charged with operating a motor vehicle under the influence. Estep was indicted by a Fayette Circuit Court grand jury for a felony count of operating a motor vehicle under the influence of alcohol, fourth or greater offense, with aggravating circumstances of a breath alcohol level of 0.18.

Estep's prior DUI offenses occurred in 2007, 2008, and 2009. At the time of those convictions, the look-back period under KRS 189A.010(5) was five years. However, KRS 189A.010(5) increased the look-back period to ten years, effective April 9, 2016.

Estep made a motion challenging the application of the new ten-year look-back period to enhance his DUI to a fourth offense. The trial court orally denied this motion. Estep then entered a conditional guilty plea to DUI, fourth or greater offense within ten years, with aggravating circumstances. He reserved his

² We recently addressed this same argument in *Perrin v. Commonwealth*, No. 2016-CA-001606-MR, 2018 WL 2460168 (Ky. App. June 1, 2018). We follow the same analysis and reach the same conclusion here.

right to appeal the trial court's denial of his motion relating to the DUI charge. He was sentenced to two years' imprisonment. This appeal followed.³

ANALYSIS

Estopp asserts on appeal that the trial court erred when it applied the ten-year look-back period. He contends the application of the amended statute to capture any DUI convictions beyond five years (as was the law prior to the amendment) violates: (1) the Contract Clause; (2) the principles of *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); and (3) the prohibition against *ex post facto* laws.

All three of Estopp's arguments have been addressed and rejected by the Kentucky Supreme Court. *See Commonwealth v. Jackson*, 529 S.W.3d 739 (Ky. 2017). In *Jackson*, the Court held that although plea agreements are contracts, any reference to the prior five-year look-back period was "not intended to constitute an immunization" from statutory changes to the DUI statute. *Id.* at 745. Regarding the *ex post facto* violation, the Court held that the amended statute does not create a new offense, but simply imposes different penalties based on the status of the defendant. *Id.* at 746 (citing *Commonwealth v. Ball*, 691 S.W.2d 207

³ This appeal was held in abeyance pending the Kentucky Supreme Court's decisions in two cases that were consolidated and decided as *Commonwealth v. Jackson*, 529 S.W.3d 739 (Ky. 2017).

(Ky. 1985)). Lastly, the Court held that the requirements of *Boykin* are not violated when unforeseeable legislative changes occur long after the plea colloquy took place. *Id.* at 747.

We reviewed the record and arguments in this case in the context of *Jackson*. We conclude the trial court correctly determined that the ten-year look-back period contained in the amended version of KRS 189A.010(5) applied in this case.

CONCLUSION

Based on the foregoing, the order of the Fayette Circuit Court is affirmed.

DIXON, JUDGE, CONCURS.

THOMPSON, K., JUDGE, DISSENTS.

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