

Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-000892-MR

WILLIE WATERS

APPELLANT

v. APPEAL FROM BOONE CIRCUIT COURT
HONORABLE JAMES R. SCHRAND, II, JUDGE
ACTION NO. 16-CR-00816

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: NICKELL, TAYLOR, AND K. THOMPSON, JUDGES.

TAYLOR, JUDGE: Willie Waters brings this *pro se* appeal from an April 25, 2017, Final Judgment and Sentence of Imprisonment upon a conditional guilty plea to the offense of, *inter alia*, driving a motor vehicle under the influence (fourth offense). We affirm.

On November 15, 2016, Waters was indicted upon the offense of operating a motor vehicle while under the influence of alcohol/drugs, fourth

offense, operating a motor vehicle while license revoked or suspended, violation of an emergency protection order or domestic violation order, failure to produce insurance card, third-degree terroristic threatening, and leaving the scene of an accident. The record indicates that Waters had three previous driving under the influence (DUI) convictions since December 11, 2008.

Effective April 9, 2016, Kentucky Revised Statutes (KRS)

189A.010(5) was amended to extend the look-back period for DUI enhancement from five years to ten years. Waters filed a motion challenging application of the ten-year look-back period in KRS 189A.010(5) to enhance his DUI to a fourth offense upon statutory, contractual, and constitutional grounds. By order entered February 27, 2017, the circuit court determined that the ten-year look-back period found in KRS 189A.010(5) may be utilized to enhance Waters' DUI to fourth offense.

Waters and the Commonwealth eventually reached a plea agreement. Under the agreement, Waters entered a conditional guilty plea to the indicted offenses and was sentenced to a total of five-years' imprisonment probated for a period of five years. Waters preserved the right to appeal the application of the ten-year look-back period found in KRS 189A.010(5). This appeal follows.

While the appeal was pending, Waters filed a motion to hold the appeal in abeyance pending disposition of *Commonwealth v. Jackson*, Appeal No.

2016-SC-000530 and *Commonwealth v. Denson*, Appeal No. 2016-SC-000531.

Both appeals were consolidated before the Kentucky Supreme Court, and the legal issue presented in both appeals was application of the ten-year look-back period set forth in KRS 189A.010(5). By order entered September 18, 2017, the Court of Appeals granted the motion and held the appeal in abeyance. The appeal was returned to the active docket by order entered January 4, 2018, as the Supreme Court rendered its opinion in the consolidated appeals (*Commonwealth v. Jackson*, 529 S.W.3d 739 (Ky. 2017)).

In his brief, Waters alleges that application of the ten-year look-back period in KRS 189A.010(5) violates *ex post facto* principles of the United States Constitution and the Kentucky Constitution, offends principals of contract law, and encroaches upon constitutional protections set forth in *Boykin v. Alabama*, 395 U.S. 238 (1969). Waters acknowledges that these same arguments were rejected by the Supreme Court in *Jackson*, 529 S.W.3d 739. However, Waters asks this Court to “express its opinion about these issues and urge the Kentucky Supreme Court to review its opinion if it views the law differently.” Waters’ Brief at 11.

After *Jackson* was rendered by the Supreme Court, the Court of Appeals published two opinions (*Martin v. Commonwealth*, 557 S.W.3d 311 (Ky. App. 2018) and *Power v. Commonwealth*, 563 S.W.3d 97 (Ky. App. 2018)) upon the ten-year roll-back period in KRS 189A.010(5). In both appeals, this Court

recognized the holding of *Jackson*, 529 S.W.3d 739 and “declined” the invitation to express dissatisfaction therewith. We are bound to follow *Jackson*, 529 S.W.3d 739, *Martin*, 557 S.W.3d 311 and *Power*, 563 S.W.3d 97 and otherwise decline to comment on the holdings of these cases. *See* Supreme Court Rule 1.030(8)(a). Accordingly, we conclude that Waters’ allegations of error are without merit.

For the foregoing reasons, the final judgment and sentence of imprisonment upon a conditional guilty plea of the Boone Circuit Court is affirmed.

NICKELL, JUDGE, CONCURS.

THOMPSON, K., JUDGE, CONCURS IN RESULT ONLY.

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