

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2017-CA-001162-MR

TERRENCE LAMAR FRAZIER

APPELLANT

v. APPEAL FROM UNION CIRCUIT COURT  
HONORABLE C. RENE WILLIAMS, JUDGE  
ACTION NO. 16-CR-00120

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: ACREE, GOODWINE, AND SPALDING, JUDGES.

ACREE, JUDGE: Terrence Frazier appeals an order from the Union Circuit Court denying his motion challenging the application of the ten-year look-back period contained in the amended version of KRS<sup>1</sup> 189A.010 to enhance his driving under the influence (DUI) charge to a felony fourth offense. Frazier entered a

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<sup>1</sup> Kentucky Revised Statutes.

conditional guilty plea to the DUI, fourth offense, among other offenses, reserving his right to appeal. For the reasons set forth herein, we affirm.<sup>2</sup>

### **FACTS AND PROCEDURE**

Frazier was arrested on September 5, 2016, and was charged with operating a motor vehicle under the influence. Frazier was indicted by a Union Circuit Court grand jury for a felony count of operating a motor vehicle under the influence of alcohol/drugs, fourth or greater offense, on October 4, 2016.

Frazier's prior DUI offenses occurred in 2009, 2010, and 2012. 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.

Frazier made an oral motion challenging application of the new ten-year look-back period to enhance his DUI to a fourth offense. The trial court denied this motion. Frazier then entered a conditional guilty plea to DUI, fourth or greater offense within ten years; reckless driving; improper equipment; and third-degree terroristic threatening. He reserved his 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.

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<sup>2</sup> We recently addressed this same argument in *Monty 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.

## ANALYSIS

Frazier 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 Frazier'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 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 (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.

Having reviewed this record in light of *Jackson*, we conclude the trial court correctly determined the ten-year look-back period of the amended version of KRS 189A.010(5) applied in this case.

**CONCLUSION**

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

ALL CONCUR.

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