

RENDERED: JANUARY 18, 2019; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-001625-MR

THOMAS EUGENE CROCKETT

APPELLANT

v. APPEAL FROM ROWAN CIRCUIT COURT
HONORABLE BETH LEWIS MAZE, JUDGE
ACTION NO. 17-CR-00024

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: JONES, NICKELL, AND TAYLOR, JUDGES.

JONES, JUDGE: Thomas Crockett appeals the Rowen Circuit Court's final judgment and sentence following entry of his conditional guilty plea to fourth offense driving under the influence (DUI). Crockett challenges the application of

the ten-year lookback period in KRS¹ 189A.010(5). After careful review, we affirm.

I. BACKGROUND

Crockett was first convicted of DUI on September 8, 2008. He was convicted of two additional DUI charges on April 17, 2013. On April 9, 2016, Governor Bevin signed SB 56 into law, which amended the lookback period in KRS 189A.010(5) from five years to ten years. The bill contained an emergency clause, which made it effective immediately. Crockett was arrested on January 20, 2017, for DUI, second offense; driving on DUI suspended license, first offense; and leaving the scene of an accident. Based on the amended increased lookback period in KRS 189A.010(5), the Commonwealth used Crockett's 2008 and 2012 convictions to amend his January 20, 2017 DUI charge to a DUI, fourth offense.

On May 25, 2017, Crockett moved to amend his DUI charge from a fourth offense to a third offense. The trial court denied Crockett's motion, and he entered a conditional guilty plea to DUI, fourth offense on July 7, 2009. Crockett reserved his right to appeal the trial court's ruling on the ten-year lookback issue.

RCr² 8.09. He was sentenced to twenty-six months in prison. This appeal followed.

¹ Kentucky Revised Statutes.

² Kentucky Rules of Criminal Procedure.

II. ANALYSIS

Crockett asserts on appeal that the trial court erred when it applied the ten-year lookback period. He argues that the application of the amended statute to encompass any DUI convictions beyond five years (as was the law prior to the amendment) violates: (1) the Contract Clause; (2) his rights under *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.³

All three of Crockett’s arguments were addressed and rejected by the Kentucky Supreme Court in *Commonwealth v. Jackson*, 529 S.W.3d 739 (Ky. 2017). First, the Court held that although plea agreements are contracts, any reference to the prior five-year lookback period was “not intended to constitute and immunization” from statutory changes to the DUI statute. *Id.* at 745. Second, the Court held that the requirements of *Boykin* are not violated when unforeseeable legislative changes occur long after plea bargaining took place. *Id.* at 747. Finally, as to the *ex post facto* violation argument, 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 (Ky. 1985)). Having reviewed the record, considering the Kentucky Supreme

³ “No State shall . . . pass any *ex post facto* Law, or Law impairing the Obligation of Contracts[.]” U.S. Const. art. I, § 10, cl. 1.

Court's holdings in *Jackson*, we are confident that the trial court correctly applied the ten-year lookback period contained in the amended version of KRS 189A.010(5).

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

ALL CONCUR

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