

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

RONNIE FRANK JONES,

Defendant-Appellee.

UNPUBLISHED

January 22, 2009

No. 280698

Wayne Circuit Court

LC No. 07-008738-01

Before: Murphy, P.J., and K.F. Kelly and Donofrio, JJ.

PER CURIAM.

The prosecution appeals as of right from the circuit court's order granting defendant's motion to quash the information and dismissing defendant's felony prosecution for operating a motor vehicle while intoxicated, MCL 257.625(9) and (11). We reverse and remand for further proceedings.

I. Facts and Procedural History

Defendant was charged with one count of operating a motor vehicle while intoxicated (OWI), MCL 257.625(1), a misdemeanor, for driving while intoxicated on March 22, 2007. As a misdemeanor, defendant's potential jail time was limited to 93 days. However, because defendant has two previous OWI convictions from 1996 and 1997, the prosecutor sought to charge defendant with a felony pursuant to MCL 257.625(11) or MCL 257.625(9), as amended by 2006 PA 564, effective January 3, 2007.¹ Defendant moved to quash the information, arguing that application of the amended statute was impermissible under the Ex Post Facto Clause of the United States Constitution. The circuit court agreed, granted defendant's motion, and dismissed the case without prejudice.

II. Standards of Review

We review de novo a trial court's ruling on a motion to dismiss based on legal grounds. *People v Owen*, 251 Mich App 76, 78; 649 NW2d 777 (2002). Further, to the extent that we

¹ Before MCL 257.625 was amended, only convictions incurred within the previous ten years could be considered for enhancement under MCL 257.625(9) and (11).

interpret constitutional and statutory provisions, our review is de novo. *People v Callon*, 256 Mich App 312, 315; 662 NW2d 501 (2003).

II. Ex Post Facto Laws

The prosecution argues that the trial court erred by granting defendant's motion to quash based on the reasoning that application of the enhanced penalty provisions of MCL 257.625, as amended, violates the Ex Post Facto Clause. We agree. Both the United States and Michigan Constitutions prohibit ex post facto laws, or laws that criminalize an act after it has been committed. US Const, art 1, § 10; Const 1963, art 1, § 10. "All ex post facto laws share two elements: (1) they attach legal consequences to acts before their effective date, and (2) they work to the disadvantage of the defendant." *Callon*, *supra* at 318.

MCL 257.625(9) provides, in pertinent part, "If a person is convicted of violating subsection (1)" and "the violation occurs after 2 or more prior convictions, regardless of the number of years that have elapsed since any prior conviction, the person is guilty of a felony" ² Prior to the current version of MCL 257.625, which became effective on January 3, 2007, a defendant could be charged with a felony only if his or her prior drunken driving-related offenses had occurred within the previous ten years. Defendant contends that application of the current version of the statute to his case violates the prohibition against ex post facto laws, as use of his prior convictions under the previous statute would have been time-barred. We disagree.

This Court has recently held that the application of MCL 257.925(9), as amended, to new offenses committed after January 3, 2007 does not violate the state or federal Ex Post Facto Clauses, regardless of the prior convictions' dates. *People v Perkins*, 280 Mich App 244; ___ NW2d ___ (2008). We reasoned that "the [January 3, 2007] amendment [does] not attach legal consequences to . . . prior offenses, which occurred before the amendment's effective date. Rather, the amendment made the consequences of their *current offenses*, which occurred after January 3, 2007, more severe on the basis of defendants' prior convictions." *Id.* at 251 (emphasis added). In denying leave to appeal the *Perkins* decision, our Supreme Court explicitly stated, "[W]e AFFIRM the Court of Appeals decision holding that Heidi's Law, MCL 257.625, does not violate the ex post facto provisions of the federal and state Constitutions." *People v Perkins*, ___ Mich ___, ___ NW2d ___ (2008). Accordingly, "the change in the predicate offenses used to raise current conduct to the felony level does not constitute an ex post facto violation." *Perkins*, *supra* at 252.

Further, defendant's argument that consideration of his prior convictions should be time-barred, lest he be deprived of a vested interest, is unavailing. Defendant ignores the fact that the amended statute does not attach legal consequences to his prior conduct, only to his future conduct. In addition, defendant fails to cite any legal authority supporting his position that he

² MCL 257.625(11) similarly provides, in part, "If a person is convicted of violating subsection (3)" and "the violation occurs after 2 or more prior convictions, regardless of the number of years that have elapsed since any prior conviction, the person is guilty of a felony" Subsection (3) makes it a misdemeanor to operate a motor vehicle while the operator is "visibly impaired." MCL 257.625(3).

has a vested interest in the expiration from consideration of his prior convictions for enhancement purposes. The circuit court erred in granting defendant's motion to quash.³

IV. Due Process and Equal Protection

Although not preserved for appeal, defendant further asserts that the application of MCL 257.625(9) and (11), as amended, violates his rights under both the Equal Protection Clause, US Const, Am XIV, § 1; Const 1963, art 1, § 2, and the Due Process Clause, US Const, Am XIV, § 1; Const 1963, art 1, § 17. We may consider unpreserved issues concerning constitutional matters that present a question of law as to which the necessary facts have been presented. *People v Davis*, 250 Mich App 357, 364; 649 NW2d 94 (2002).

“[Generally, n]either the disparate treatment of criminal offenders nor the impingement of driving privileges is generally viewed as affecting an individual's fundamental interests.” *People v Haynes*, 256 Mich App 341, 345; 664 NW2d 225 (2003). Defendant has not shown, under the rational basis test, that the enhancement provisions of MCL 257.625, as amended, are arbitrary and not rationally related to a legitimate government concern. *Id.* at 346. Rather, the statute is tailored to apply to repeat OWI offenders and is rationally related to the government's unquestionably legitimate purpose: deterring habitual drunk driving. *Id.* at 347-348. Defendant's due process argument lacks merit for the same reasons: The Legislature's decision to amend MCL 257.625 does not represent an arbitrary exercise of its power, but rather a reasonable decision to deter recidivist drunk driving by making habitual offenders subject to enhanced punishment should they operate while impaired in the future. Further, as of the date of the instant offense, defendant had constructive notice pursuant to the effective date of the amendment, that his prior convictions would subject him to felony prosecution if he operated a vehicle while impaired. *Haynes, supra* at 349. Consequently, defendant's argument that his equal protection and due process rights were not violated is unavailing.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ Kirsten Frank Kelly
/s/ Pat M. Donofrio

³ This Court's decision in *Perkins* applies equally to the application of MCL 257.625(11), as amended.