

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
November 20, 2012

v

JERARD DUNN,

No. 305671
Wayne Circuit Court
LC No. 10-007585-FH

Defendant-Appellant.

Before: MURPHY, C.J., and O'CONNELL and WHITBECK, JJ.

PER CURIAM.

Defendant Jerard Dunn appeals by leave granted the trial court's judgment of sentence ordering Dunn to pay a crime victim's assessment fee of \$130. We affirm.

I. FACTS

On July 3, 2010, a police officer observed Dunn placing a handgun inside of a vehicle. As a result of a prior conviction, Dunn did not have the right to carry a handgun. On July 3, 2010, the Crime Victim's Rights Act authorized trial courts to order persons convicted of felonies to pay a crime victim's assessment of \$60.¹ On December 16, 2010, the Michigan Legislature amended the Crime Victim's Rights Act with immediate effect, increasing the assessment from \$60 to \$130.²

On January 7, 2011, Dunn pleaded guilty to possession of a firearm during the commission of a felony (felony-firearm).³ On January 21, 2011, the trial court sentenced Dunn to serve two years' imprisonment and to pay a Crime Victim's Rights assessment of \$130.

Dunn moved the trial court to correct the sentence, arguing that the increased assessment violated the Ex Post Facto clauses of the United States and Michigan Constitutions. On July 27,

¹ MCL 780.905; 1996 PA 344; 2005 PA 315.

² MCL 780.905; 2010 PA 281.

³ MCL 750.227b.

2011, the trial court denied Dunn’s motion, ruling that the higher assessment did not violate the Ex Post Facto Clause because the higher assessment was not a punishment.

II. EX POST FACTO CLAUSE AND CRIME VICTIM’S RIGHTS ASSESSMENTS

A. STANDARD OF REVIEW

This Court reviews de novo an ex post facto challenge, because the interpretation of a constitutional provision is a question of law.⁴

B. LEGAL STANDARDS

The United States Constitution provides that “no state shall . . . pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts.”⁵ The Michigan Constitution also provides that “no bill of attainder, ex post facto law or law impairing the obligation of contract shall be enacted.”⁶ We do not interpret the Michigan Ex Post Facto Clause more expansively than the federal Ex Post Facto Clause.⁷

A statute violates the Ex Post Facto Clause if it is (1) retrospective, and (2) disadvantages the offender.⁸ A statute is retrospective if it attaches legal consequences to conduct the defendant completed before the statute’s effective date.⁹ A statute disadvantages the offender if it “(1) makes punishable that which was not, (2) makes an act a more serious criminal offense, (3) increases the punishment, or (4) allows the prosecution to convict on less evidence.”¹⁰

C. APPLYING THE STANDARDS

The parties do not dispute that the increased assessment is retrospective. It is clear that the trial court applied the increased \$130 assessment to Dunn when the law on July 3, 2010, assessed only \$60. The parties contest only whether the increased assessment disadvantaged Dunn by increasing his punishment.

⁴ *People v Callon*, 256 Mich App 312, 315; 662 NW2d 501 (2003); see *People v Smith*, 478 Mich 292, 298; 733 NW2d 351 (2007).

⁵ US Const, art I, § 10.

⁶ Const 1963, art 1, § 10.

⁷ *Callon*, 256 Mich App at 317.

⁸ *Weaver v Graham*, 450 US 24, 29; 101 S Ct 960; 67 L Ed 2d 17 (1981); *People v Stevenson*, 416 Mich 383, 397; 331 NW2d 143 (1982); *Callon*, 256 Mich App at 318.

⁹ *Carmell v Texas*, 529 US 513, 520-521; 120 S Ct 1620; 146 L Ed 2d 577 (2000); *Callon*, 256 Mich App at 318.

¹⁰ See *Carmell*, 529 US at 524-525; *Riley v Parole Bd*, 216 Mich App 242, 244; 548 NW2d 686 (1996); *People v Earl*, ___ Mich App ___; ___ NW2d ___ (2012) (slip op at 4).

Dunn argues that the increased assessment is a part of the defendant's sentence and thus is a punishment. However, a recent panel of this Court has squarely decided this issue. In *People v Earl*, this Court determined that applying the crime victim's assessment increase from \$60 to \$130 to a defendant did not violate the Ex Post Facto Clause because the assessment is not a restitution or punishment.¹¹ Principles of stare decisis require us to reach the same result in a case that presents the same or substantially similar issues as in a case that another panel of this Court has decided.¹²

Thus, we reject Dunn's argument that the increased assessment violates the Ex Post Facto Clauses of the United States and Michigan Constitutions because it is a punishment.¹³ We conclude that the trial court did not err when it determined that the assessment was not an increased punishment, and that imposing the increased assessment did not violate ex post facto principles.

Affirmed.

/s/ William B. Murphy
/s/ Peter D. O'Connell
/s/ William C. Whitbeck

¹¹ *Id.* at ___ (slip op pp 4-5).

¹² MCR 7.215(C)(2); *WA Foote Hosp v City of Jackson*, 262 Mich App 333, 341; 686 NW2d 9 (2004).

¹³ We recognize that other panels of this Court have taken different positions, in whole or in part, in unpublished opinions, on the issues of increases in state costs or crime victims' rights fees. However, as noted above, principles of stare decisis require us to follow this Court's published opinion in *People v Earl*, ___ Mich App ___; ___ NW2d ___ (2012).