



**In the
Missouri Court of Appeals
Western District**

STATE OF MISSOURI,)
)
 Appellant,) **WD84314 Consolidated with WD84315**
)
 v.) **OPINION FILED: January 25, 2022**
)
 M.M.W. JR.,)
)
 Respondent.)

Appeal from the Circuit Court of Jackson County, Missouri
The Honorable David Michael Byrn, Judge

Before Division Four: Cynthia L. Martin, Chief Judge, Presiding, W. Douglas Thomson,
Judge and Janet Sutton, Judge

The State appeals from the circuit court's orders dismissing two indictments against M.M.W., Jr. ("M.M.W."). The State argues that the circuit court erred in dismissing the indictments because it erroneously relied on amendments to Chapter 211¹ that took effect after M.M.W.'s indictments to conclude that M.M.W., who was seventeen at the time of his offenses, could not be tried in a court of general jurisdiction. Because the 2018 amendments to Chapter 211 have been conclusively determined by our Supreme Court not

¹All references to statutes within Chapter 211 are to RSMo Cum. Supp. 2020 unless otherwise noted.

to be retroactive in application, the circuit court's orders dismissing the indictments against M.M.W. are reversed, and these consolidated cases are remanded to the circuit court for further proceedings.

Factual and Procedural Background

On April 13, 2018, M.M.W. was indicted on one count of attempted robbery in violation of section 570.023,² one count of armed criminal action in violation of section 571.015, and one count of assault in the fourth degree in violation of section 565.056. On May 11, 2018, M.M.W. was indicted for endangering a correctional employee in violation of section 575.155. M.M.W. was alleged to have committed these offenses on January 22, 2017, and May 15, 2017, when he was seventeen years old. M.M.W.'s indictments were filed in the circuit court of Jackson County, Missouri, and thus in the court of general jurisdiction ("circuit court").

On January 21, 2021, M.M.W. filed motions to dismiss both indictments. M.M.W. argued that 2018 amendments to chapter 211 that were enacted after M.M.W.'s indictments required the dismissal of his indictments because the amended definitions of "adult" and "child" set forth in section 211.021 required his offenses to be tried in the juvenile division of the circuit court ("juvenile court")³, since M.M.W. had not been certified for prosecution as an adult pursuant to section 211.071.1. The State argued that the 2018 amendments to chapter 211 did not operate retroactively. On January 27, 2021, the circuit court entered

²The statutory references to M.M.W.'s criminal charges are to the version of each statute in effect at the time of the alleged offense, unless otherwise noted.

³"Juvenile court" is defined by section 211.021(3) as "the juvenile division or divisions of the circuit court of the county, or judges while hearing juvenile cases assigned to them."

orders dismissing the indictments against M.M.W. without prejudice, and referring the matters to the juvenile court pursuant to section 211.061.2.

The State appeals both orders, and the appeals were consolidated.⁴ The consolidated appeals were then stayed pending the disposition of cases before the Missouri Supreme Court that were expected to resolve when the 2018 amendments to chapter 211 took effect, and whether the 2018 amendments to chapter 211 should be applied retroactively.

Standard of Review

We are to affirm the grant of a motion to dismiss in a criminal case employing the same standard used in civil matters, and thus will affirm the dismissal on any ground alleged in the motion. *State v. R.J.G.*, 632 S.W.3d 359, 364 (Mo. banc 2021) (citing *State v. Merritt*, 467 S.W. 3d 808, 810 (Mo. banc 2015)). The sole ground for dismissal raised in M.M.W.'s motions to dismiss the indictments was the retroactive effect of the 2018 amendments to chapter 211, a question that implicates statutory interpretation. "Statutory interpretation is an issue of law, which is subject to *de novo* review." *Id.* (quoting *D.E.G. v. Juv. Officer of Jackson Cnty.*, 601 S.W.3d 212, 216 (Mo. banc 2020)).

Analysis

The State raises a single point on appeal, arguing that the circuit court erred in dismissing M.M.W.'s indictments and referring his criminal matters to the juvenile court

⁴The State is authorized to appeal the circuit court's orders of dismissal, even though they were entered without prejudice, because the effect of the dismissals was to enter "final" judgments appealable pursuant to Rule 30.01(a), as the dismissals had the practical effect of terminating the proceedings against M.M.W. in the circuit court, rendering refiling of the actions futile. *State v. R.J.G.*, 632 S.W.3d 359, 362-64 (Mo. banc 2021).

because the 2018 amendments to chapter 211, enacted after M.M.W.'s indictments, did not apply retroactively to M.M.W.'s indictments.

The collective effect of the 2018 amendments to chapter 211 was to confer statutory authority to juvenile courts over proceedings involving state law or municipal ordinance offenses committed by someone prior to attaining the age of eighteen years. Before the amendments, the juvenile court's statutory authority generally extended only to state law or municipal ordinance offenses committed by someone prior to attaining the age of seventeen years. It is uncontested that M.M.W.'s offenses would be subject to the statutory authority of the juvenile court if the 2018 amendments to chapter 211 apply retroactively to his indictments, and that the juvenile court would not have the statutory authority to adjudicate M.M.W.'s offenses if the 2018 amendments to chapter 211 do not apply retroactively.

The Missouri Supreme Court resolved the question of retroactive application of the 2018 amendments to chapter 211 in the concurrently decided cases of *State ex rel. T.J. v. Cundiff*, 632 S.W.3d 353 (Mo. banc 2021) and *State v. R.J.G.*, 632 S.W.3d 359 (Mo. banc 2021). First, the Supreme Court concluded that the 2018 amendments to section 211, though purportedly effective on January 1, 2021, were not, in fact, effective "until the general assembly appropriated sufficient funds on July 1, 2021, for the juvenile division to provide the expanded services" anticipated by the amendments. *R.J.G.*, 632 S.W.3d at 364 (citing *T.J.*, 632 S.W.3d at 356 (holding that section 211.438 controlled the effective date of the 2018 amendments to chapter 211, as it provided that "[e]xpanding services from

seventeen years of age to eighteen years of age is a new service and shall not be effective until an appropriation sufficient to fund the expanded service is provided therefor"))).

Having determined the effective date of the 2018 amendments to chapter 211, the Supreme Court then concluded that the amendments do not apply to criminal conduct committed prior to the effective date. *R.J.G.*, 632 S.W.3d at 364-65. Instead, "a defendant must be tried for the offense as defined by the law that existed at the time of the offense." *Id.* at 364 (quoting *State v. Pierce*, 433 S.W.3d 424, 427 n.1 (Mo. banc 2014)).

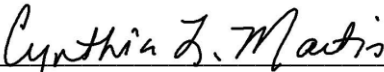
Thus, the definitions of "adult" and "child" in effect on the day of M.M.W.'s offenses control whether the juvenile court had statutory authority over the adjudication of those offenses. *See R.J.G.*, 632 S.W.3d at 365. Relevant to this case, the definition of "adult" on the dates of M.M.W.'s offenses was "a person seventeen years of age or older" Section 211.021(1) RSMo 2016. The definition of "child" on the dates of M.M.W.'s offenses was "any person under seventeen years of age" Section 211.021(2) RSMo 2016. As a matter of law, the 2018 amendments to chapter 211 do not apply to confer statutory authority on the juvenile court to adjudicate M.M.W.'s offenses.

Our stay of these consolidated appeals was lifted shortly after the Missouri Supreme Court issued its decisions in *T.J.*, 632 S.W.3d 353, and *R.J.G.*, 632 S.W.3d 359. Thereafter, M.M.W. filed a letter with this Court "conced[ing] that *R.J.G.* requires this Court to find that the [circuit] court erred in dismissing" his indictments, and asking this court to "remand [his matters] to the [circuit] court for further proceedings consistent with the holding in *R.J.G.*"

We agree that is the required course of action.

Conclusion

The circuit court's orders dismissing M.M.W.'s indictments and referring his matters to the juvenile court for adjudication are reversed. These cases are remanded to the circuit court for further proceedings.



Cynthia L. Martin, Judge

All concur