

Summary of SC89867, *State of Missouri v. Michael G. Craig*

Appeal from the Clay County circuit court, Judge Michael J. Maloney

Attorneys: Craig was represented by Bruce B. Brown of Brown & Brown Attorneys LLC in Kearney, (816) 628-6100; and James B. Farnsworth of the attorney general's office in Jefferson City, (573) 751-3321.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A man who admitted to driving while intoxicated challenges the finding that he is an aggravated offender and his sentence of five years in prison. In a unanimous decision written by Judge Zel M. Fischer, the Supreme Court of Missouri vacates the judgment and remands (sends back) the case for the man to be resentenced. The man did not waive his statutory right to appeal the court's finding and sentence by admitting he had driven while intoxicated but asking for a hearing as to whether he had the sufficient number of prior intoxication-related offenses to enhance his sentence. The state need not prove that each prior guilty plea used for enhancement was entered knowingly and voluntarily. If a defendant wishes to raise such a claim, the defendant must do so in a timely attack on the guilty plea, not in a later proceeding related to a subsequent charge. Here, the state did not prove enough prior offenses for the man to be sentenced as an aggravated offender; he must be resentenced, therefore, as a persistent offender.

Facts: Michael Craig was charged with driving while intoxicated, normally a class B misdemeanor but enhanced to a class C felony because, the state alleged, he was an aggravated offender with three prior intoxication-related convictions. He appeared in February 2007 in the circuit court willing to plead guilty to driving while intoxicated but disputing the state's contention that he was an aggravated offender and guilty of a class C felony. The court bifurcated the proceeding (dividing it into a guilt phase and a sentencing phase), elicited admissions from Craig to establish a factual basis for the class B misdemeanor of driving while intoxicated and then conducted a hearing as to whether Craig's sentence was subject to enhancement. In March 2007, the court determined that Craig had pleaded guilty to three prior offenses, found he was an aggravated offender and guilty of a class C felony, and sentenced him to five years in prison. Craig appeals.

VACATED AND REMANDED.

Court en banc holds: (1) Craig has preserved his statutory right to appeal the trial court's findings regarding his prior intoxication-related offenses. Rule 24.035, governing postconviction motions, does not preclude Craig's appeal. The rule is based on the principle that a guilty plea serves as a waiver to any challenge to the merits of an underlying conviction. Here, however, Craig did not plead guilty to the charged offense.

He admitted facts establishing certain elements of the offense – that he had driven while intoxicated – but he contested the facts establishing the applicability of the alleged prior intoxication-related offenses. He permissibly bifurcated the proceedings under section 577.023, RSMo Supp. 2003, which in no way constitutes a waiver of Craig’s right to appeal under section 547.070, RSMo 2000.

(2) Craig cannot challenge now whether his guilty pleas to previous charges were entered knowingly and voluntarily, and the state need not prove that prior courts did not err in accepting the pleas. This Court adopts the rationale of *State v. Quinn*, 594 S.W.2d 599 (Mo. banc 19080), and *Dover v. State*, 725 S.W.2d 915 (Mo. App. 1987): To enhance a sentence under section 577.023, RSMo Supp. 2005, the state is not obligated to prove affirmatively that a defendant’s prior guilty plea was entered in accord with the rules governing state and municipal prosecutions. This does not abrogate a defendant’s constitutional right to enter a knowing and voluntary guilty plea, but the proper forum for addressing alleged constitutional insufficiencies is in a timely direct attack on the plea itself, not in a collateral challenge in a subsequent proceeding such as this.

(3) The trial court erred in finding Craig was an aggravated offender and in sentencing him as such. For a defendant to be an aggravated offender, guilty of a class C felony and subject to a higher maximum sentence, the state must prove the defendant has three prior intoxication-related offenses. If the state proves two such prior offenses, then the defendant is a persistent offender, guilty of a class D felony and subject to a maximum sentence of four years in prison. To be treated as a prior conviction for purposes of enhancement under section 577.023, the prior judgment, on its face, must show beyond a reasonable doubt that the defendant pleaded guilty to or was found guilty of an intoxication-related offense. Here, only two of the three prior convictions for which the state offered evidence qualify. Both are valid judgments on their faces and contain specific language as to the substance of Craig’s guilty pleas. The third judgment, however, does not show beyond a reasonable doubt that Craig committed an intoxication-related offense. It is certified but is not valid on its face because it leaves blank the spaces where the court was to mark whether Craig pleaded guilty or not guilty and whether Craig was found guilty or not guilty. As such, it cannot be used to enhance punishment under the clear and unambiguous language of section 577.023. Because the state proved only two prior intoxication-related traffic offenses, Craig’s sentence was subject to enhancement as a persistent – not an aggravated – offender.