

No. SC97633

In the
Supreme Court of Missouri

MISSOURI DEPARTMENT OF CORRECTIONS,

Appellant,

v.

DIMETRIOUS WOODS,

Respondent.

Appeal from the Circuit Court of Cole County, Missouri,
The Honorable Daniel R. Green, Judge

SUBSTITUTE BRIEF OF THE APPELLANT

ERIC S. SCHMITT
Attorney General

ANDREW J. CRANE
Assistant Attorney General
Missouri Bar No. 68017
P.O. Box 899
Jefferson City, MO 65102
(573) 751-0264
(573) 751-3825 Fax
andrew.crane@ago.mo.gov

Attorneys for Appellant

Table of Contents

Table of Authorities	3
Jurisdictional Statement.....	4
Statement of Facts.....	5
Point Relied On.....	7
I. The Cole County Circuit Court erred in granting Woods’s motion for judgment on the pleadings because the Missouri Legislature’s amendments to the criminal statutes governing Woods’s offense do not apply retroactively to his sentence, in that § 1.160 bars the retroactive application of amendments to criminal statutes.	7
Argument.....	8
I. The Cole County Circuit Court erred in granting Woods’s motion for judgment on the pleadings because the Missouri Legislature’s amendments to the criminal statutes governing Woods’s offense do not apply retroactively to his sentence, in that § 1.160 bars the retroactive application of amendments to criminal statutes.	8
Conclusion	16
Certificates of Service and Compliance	17

Table of Authorities

Cases

<i>Dudley v. Agneil</i> , 207 S.W.3d 617 (Mo. 2006)	13
<i>Edwards v. State</i> , 215 S.W.3d 292 (Mo. App. S.D. 2007)	8, 10
<i>Fields v. Missouri Board of Probation and Parole</i> , 559 S.W.3d 12 (Mo. App. W.D. 2018).....	passim
<i>In re Marriage of Busch</i> , 310 S.W.3d 253 (Mo. App. E.D. 2010).....	5, 9, 10
<i>Jones v. Fife</i> , 207 S.W.3d 614 (Mo. 2006)	13
<i>McDermott v. Missouri Board of Probation and Parole</i> , 61 S.W.3d 246 (Mo. 2001)	14
<i>McGuire v. Director of Revenue</i> , 174 S.W.3d 87 (Mo. App. E.D. 2005).....	10
<i>Prapotnik v. Crowe</i> , 55 S.W.3d 914 (Mo. App. W.D. 2001).....	12
<i>Short v. Missouri Board of Probation and Parole</i> , 456 S.W.3d 72 (Mo. App. W.D. 2015).....	14
<i>State ex rel. Nixon v. Russell</i> , 129 S.W.3d 867 (Mo. 2004)	8, 11, 12, 13
<i>State v. Pribble</i> , 285 S.W.3d 310 (Mo. 2009)	14
<i>Vill. N. Inc. v. State Tax Comm’n of Mo.</i> , 799 S.W.2d 197 (Mo. App. E.D. 1990).....	16
<i>Warden, Lewisburg Penitentiary v. Marrero</i> , 417 U.S. 653 (1974).....	15

Constitutional Provisions and Statutes

Mo. Const. Art. V	5
Mo. Const. Art. V, § 3.....	5
Mo. Const. Art. V, § 10.....	5
§ 195.295.3 RSMo. (2000)	9, 17
§ 1.160, RSMo. (2016)	passim
§ 195.223, RSMo. (2000)	11

Jurisdictional Statement

This case concerns a challenge to a state prisoner's parole eligibility date. Respondent Dimetrious Woods sued Appellant Missouri Department of Corrections for declaratory judgment in the Circuit Court of Cole County seeking a declaration that he was eligible for parole. The circuit court granted Woods's motion for judgment on the pleadings and entered judgment against the Department. The circuit court's grant of Woods's motion for judgment on the pleading is a final, appealable judgment on the merits. *See In re Marriage of Busch*, 310 S.W.3d 253, 260 (Mo. App. E.D. 2010).

On appeal, the Missouri Court of Appeals reversed and entered judgment in the Department's favor. After opinion, the court of appeals granted transfer to this Court because the case involves an issue of general interest and importance. Mo. Const. Art. V, § 10. This Court is the highest court in Missouri and "[i]ts jurisdiction shall be coextensive with the state." Mo. Const. Art. V, § 3. The Constitution thus vests this Court with "[s]upervisory authority over all courts." Mo. Const. Art. V, § 4.1.

Statement of Facts

Respondent Dimetrious Woods is an inmate at the Jefferson City Correctional Center in Jefferson City, Missouri. (L.F. at 8). In 2007, the Clay County Circuit Court convicted Woods of second-degree drug trafficking as defined by Missouri statute § 195.223, for an offense he committed on May 19, 2006. (L.F. at 6–7). Because the court found Woods to be a prior drug offender, the court had to sentence him for a class A felony term to be served without probation or parole under § 195.295.3, RSMo. (2000) (since repealed). The Court sentenced Woods to twenty-five years' imprisonment without probation or parole. (L.F. at 7).

In 2014, the General Assembly passed Senate Bill 491 which became effective on January 1, 2017. Senate Bill 491 overhauled Missouri's criminal code. Included among the General Assembly's reforms, Senate Bill 491 transferred § 195.223 to § 579.068, transferred and amended § 195.275 (defining and prescribing the felony classification for prior and persistent drug offenders) to § 579.170, and repealed § 195.295. Under the new criminal code, prior drug offenders convicted of second-degree drug trafficking are no longer required to serve the authorized term for a class A felony without probation or parole.

Woods petitioned for declaratory judgment in the Circuit Court of Cole County. (L.F. at 5). In his petition, Woods argued that the sentencing laws in

the new criminal code apply retroactively to him and that he should be immediately eligible for parole. The Department of Corrections argued that Missouri law specifically prohibits retroactive application of amended criminal statutes. (L.F. at 32) (citing § 1.160, RSMo. (2016)).

Both Woods and the Department of Corrections filed motions for judgment on the pleadings. (L.F. at 29, 32). The circuit court granted Woods's motion and held that the amendments to Chapter 195 and the statutes governing Woods's offenses could apply retroactively to make him immediately eligible for parole. (L.F. at 38).

The Department appealed and the Missouri Court of Appeals reversed, holding that § 1.160 prohibits retroactive application of the legislative amendments to the statutes governing second-degree drug trafficking. *Woods v. Department of Corrections*, case no. 81266, *slip op* at 8 (Mo. App. W.D. 2018). Judge Ahuja dissented, writing that statutes addressing parole eligibility cannot fall within the retroactivity bar of § 1.160. *Woods v. Department of Corrections*, case no. 81266, Ahuja, J., dissenting at 2–3. Another panel of the court of appeals ruled unanimously in the Department's favor in another case that presented the same issue. *Mitchell v. Jones*, case no. 81409 (Mo. App. W.D. 2018).

Point Relied On

- I. **The Cole County Circuit Court erred in granting Woods’s motion for judgment on the pleadings because the Missouri Legislature’s amendments to the criminal statutes governing Woods’s offense do not apply retroactively to his sentence, in that § 1.160 bars the retroactive application of amendments to criminal statutes.**

State ex rel. Nixon v. Russell, 129 S.W.3d 867 (Mo. 2004)

Fields v. Missouri Board of Probation and Parole, 559 S.W.3d 12

(Mo. App. W.D. 2018).

Edwards v. State, 215 S.W.3d 292 (Mo. App. S.D. 2007).

§ 1.160, RSMo. (2016).

Argument

- I. The Cole County Circuit Court erred in granting Woods’s motion for judgment on the pleadings because the Missouri Legislature’s amendments to the criminal statutes governing Woods’s offense do not apply retroactively to his sentence, in that § 1.160 bars the retroactive application of amendments to criminal statutes.**

Section 1.160 provides that Woods’s punishment cannot be altered by the legislative amendments to Missouri’s criminal code and requires that he be punished under the laws in effect at the time of his offense. § 1.160, RSMo. (2016). Woods was convicted of second-degree drug trafficking and sentenced, as a prior drug offender, to twenty-five years’ imprisonment without probation or parole. (L.F. at 7); § 195.295.3, RSMo. (2000) (since repealed). The bar on his parole eligibility was implicit in his sentence and was part of the punishment for his offense. Although sections 195.233, 195.275, and 195.295 have been repealed, the new statutes governing second-degree drug trafficking cannot apply retroactively to Woods and he must continue to serve his sentence under the laws in effect when he offended on May 19, 2006.

In reviewing a motion for judgment on the pleadings, this Court will affirm only “if the facts pleaded by the petitioner, together with the benefit of all reasonable inferences drawn therefrom, show that the non-moving party could not prevail under any legal theory.” *In re Marriage of Busch*, 310 S.W. 3d 253, (Mo. App. E.D. 2010) (internal citations omitted). But the court should

reverse if, on the face of the pleadings, an issue of fact exists, *id.* (citing *McGuire v. Director of Revenue*, 174 S.W.3d 87, 89 (Mo. App. E.D. 2005)), or if the allegations in the non-movant's pleadings show that the non-movant could prevail under some legal theory, *id.* (internal citations omitted). In an appeal from the grant of a motion for judgment on the pleadings, the Court reviews questions of law *de novo*. *Id.* at 261.

The Cole County Circuit Court erred in granting Woods's judgment on the pleadings because it applied the Missouri Legislature's amendments to the sections of Chapter 195 and 579, which govern second-degree drug trafficking, retroactively to make Woods immediately eligible for parole. The circuit court's decision incorrectly altered Woods's final sentence in violation of Missouri statute § 1.160.

Missouri law requires Woods be tried and punished under the law in effect at the time of his offense. § 1.160, RSMo; see *Edwards v. State*, 215 S.W.3d 292, 294 (Mo. App. S.D. 2007). Section 1.160 states that

No offense committed and no fine, penalty or forfeiture incurred, or prosecution commenced or pending previous to or at the time when any statutory provision is repealed or amended, shall be affected by the repeal or amendment, but the trial and punishment of all such offenses, and the recovery of the fines, penalties or forfeitures shall be had, in all respects, as if the provision had not been repealed or amended, except that all such proceedings shall be conducted according to existing procedural laws.

§ 1.160, RSMo (2016). The statute provides that neither Woods's offense, nor the penalty or punishment for his offense can be affected by later repeal or amendment of the relevant statutory provisions.

Woods was convicted of second-degree drug trafficking. § 195.223, RSMo. (2000) (since repealed) Because Woods was a prior drug offender, his sentence was governed by Missouri statute § 195.295.3, RSMo. (2000) (since repealed). Although the Missouri Legislature has since repealed and replaced the statutes governing both Woods's offense and sentence, he cannot receive the lighter punishment provided by the new criminal code because those laws were not in effect at the time of his offense. § 1.160, RSMo. (2016).

The Court of Appeals found that Woods could not benefit from retroactive application of the criminal code amendments under this Court's opinion in *State ex rel. Nixon v. Russell*, 129 S.W.3d at 870 (2004). *Woods v. Department of Corrections*, case no. WD81266, *slip op.* at 8 (Mo. App. W.D. 2018). In *Russell*, this Court announced a two-prong test to determine the retroactive effect of new laws that affect criminal sentences and parole eligibility. First, this Court asks whether the existing statute is a new provision or if it repealed a previously existing statute. *Russell*, 129 S.W.3d at 870; *Fields v. Missouri Board of Probation and Parole*, 559 S.W.3d 12, 17 (Mo. App. W.D. 2018). If the statute is a new provision, then retroactive application is not barred by § 1.160. But if the statute repealed or amended a previously existing provision, this

Court must determine whether the statute affects the prosecution, penalty, or punishment of the offense at issue. *Russell*, 129 S.W.3d at 870–871.

This approach rests on the plain text of the statute. “The plain language of § 1.160 indicates that its purpose was to fix the penalties under the criminal statutes as of the date the offense was committed, so that as a general rule, even if a statute dealing with sentencing, imprisonment, or probation is subsequently amended, the offender does not receive the benefit of the amendment.” *Fields*, 559 S.W.3d at 17 (citing *Prapotnik v. Crowe*, 55 S.W.3d 914, 918 (Mo. App. W.D. 2001)).

In *Russell*, this Court found that § 558.016.8, allowing certain prisoners to petition for parole, applied retroactively to inmates already in prison. *Russell*, 129 S.W.3d at 869, 870. But the Court’s decision that retroactive application of § 558.016.8 was not barred by § 1.160 relied on the fact that § 558.016.8 “[was] a new statutory provision” that “[did] not repeal or amend any previously existing statute.” *Id.* *Russell’s* reasoning counsels against retroactive application here because Woods seeks to benefit from the repeal and amendment of the previous versions of criminal statutes that governed second-degree drug trafficking. Because Woods’s claim “is premised upon an amended statute that repealed a provision dealing with the punishment for his offense, it falls squarely within the scope of § 1.160’s bar on retroactive application.” *Fields*, 559 S.W.3d at 19; *Russell*, S.W.3d at 870. Woods’s

argument for retroactive application fails under the first prong the test announced in *Russell*.

Woods’s claim also fails under the second prong of the *Russell* test because the General Assembly’s amendments to the criminal code repealed statutes that made up the substantive law governing Woods’s offense and affected the prosecution, penalty, and punishment for those offenses. This Court noted in *Russell* that § 1.160 would not allow retroactive application of amendments to the “substantive law governing offenses.” *Russell*, 129 S.W.3d at 870. In later opinions, this Court further explained the rationale of *Russell*, stating that § 1.160 will not bar retroactive application of a parole eligibility statute only *if* “[t]he parole provision . . . [does] not alter a substantive law governing [the offender’s] offense *or* shorten his sentence.” *Jones v. Fife*, 207 S.W.3d 614, 616 (Mo. 2006); *Dudley v. Agneil*, 207 S.W.3d 617, 619 (Mo. 2006) (emphasis added).

But § 1.160 must bar retroactive application of amendments to parole ineligibility provisions that *are* part of the substantive law governing the offense, including parole restrictions present in the statute which defines the penalty for the offense. *Fields*, 559 S.W.3d at 18–19. Such parole restrictions are part of the punishment associated with the crime and cannot be retroactively affected by legislative amendment. *Id.* at 18 (“numerous decisions indicate that a mandatory-minimum-prison-term provision located within the

statute defining the offense that bars parole eligibility for a definite period of time . . . is part of the penalty or punishment for that offense”) (citing *State v. Pribble*, 285 S.W.3d 310, 314 (Mo. 2009); *McDermott v. Missouri Board of Probation and Parole*, 61 S.W.3d 246, 248 (Mo. 2001); *Short v. Missouri Board of Probation and Parole*, 456 S.W.3d 72, 78 (Mo. App. W.D. 2015)).

Section 195.295 “was a part of the substantive law governing Woods’s offense” because it “described the authorized term of imprisonment” for Woods’s offense and “required the sentence imposed within the authorized range to be served without eligibility for probation or parole.” *Woods v. Department of Corrections*, case no. WD 81266, *slip op.* at 8. The mandatory language in § 195.295 was implicit in Woods’s sentence and part of the General Assembly’s proscribed punishment for his offense. Because Woods was a prior drug offender, the statute required that he “shall be sentenced to the authorized term of imprisonment for a class A felony, which term shall be without probation or parole” for second-degree drug trafficking. This parole ineligibility provision was specific to Woods’s offense and its effect was known at the time of sentencing.

The penalty provision in § 195.295 relates directly back to the provision defining the offense of second-degree drug trafficking and can be read only in the context of that statute. Because Woods’s claim rests on an amended statute that repealed the provision governing the punishment for his offense, it falls

under § 1.160's bar on retroactive application. *Fields*, 559 S.W.3d at 19. Woods's claim fails under the second prong of the *Russell* test, so this Court's precedent precludes the relief he seeks.

The dissent below agreed with Woods's argument that the repeal of § 195.295 affected only his parole eligibility and not his sentence. *Woods v. Department of Corrections*, case no. 81266, Ahuja, J., dissenting at 2–3. But that argument disregards the distinction between general parole statutes and specific parole restrictions that are implicit in the sentence for an offense. “Although . . . the precise time at which the offender becomes eligible for parole is not part of the sentence,’ where the statute defining the offense precludes parole eligibility for a mandatory period of time, ‘it is implicit in the terms of the sentence’ and, thus, affects the prosecution.” *Fields*, 559 S.W.3d at 19 (quoting *Warden, Lewisburg Penitentiary v. Marrero*, 417 U.S. 653, 658 (1974)).

Woods and the dissent below also ignore the scope of statutes at issue. In passing Senate Bill 491, the General Assembly transferred the statute defining Woods's offense, amended the statute defining prior drug offenders, and repealed the statute that governed Woods's sentence. This Court lacks authority to “selectively appl[y] only part of the new statute retroactively without consideration for the others.” *Fields*, 559 S.W.3d at 17. Instead, this Court must “read the statutes . . . in their entirety rather than piecemeal.” *Id.* (quoting *Vill. N. Inc. v. State Tax Comm'n of Mo.*, 799 S.W.2d 197, 201 (Mo.

App. E.D. 1990). Senate Bill 491 did not simply repeal a clause affecting Woods's parole eligibility. Instead it was broad overhaul of the criminal code, and this Court should not disregard the other aspects of Senate Bill 491 in determining what effect the legislative amendments had on the substantive law governing Woods's offense.

In situations where the legislature enacts sweeping prospective changes to criminal statutes, this Court should read § 1.160 to broadly prohibit retroactive effect. Strict enforcement of § 1.160 is important because that section allows the General Assembly to amend and improve criminal statutes without requiring legislators to account for the consequences on offenders convicted under the previous versions. The importance of limiting retroactive application of criminal amendments is further demonstrated by the General Assembly's 2005 amendment to § 1.160, which eliminated the provision allowing for retroactive application of sentencing changes that would benefit criminal defendants. *Compare* §1.160, RSMo. (1993) *with* §1.160, RSMo. (2005). The General Assembly has made it clear that changes to criminal laws cannot be retroactively applied to benefit criminals who offended under older provisions.

This Court should follow the General Assembly's mandate that § 1.160 bars the retroactive application that Woods seeks. Woods was *sentenced* as a prior drug offender for second-degree drug trafficking. That offense required

the court to impose a class A felony sentence to be served without probation or parole. 195.295.3 RSMo. (2000). Under § 1.160, the changes to the second-degree drug trafficking statutes cannot apply retroactively to remove the restriction on Woods's parole eligibility that was implicit in his sentence. So, despite the changes to the criminal code, Woods must still serve that sentence without parole.

Conclusion

For these reasons, the Court should reverse the circuit court's judgment and enter declaratory judgment in favor of the Missouri Department of Corrections.

Respectfully submitted,

ERIC S. SCHMITT
Attorney General

/s/Andrew J. Crane
ANDREW J. CRANE
Assistant Attorney General
Missouri Bar No. 68017

P.O. Box 899
Jefferson City, MO 65102
(573) 751-1508
(573) 751-3825 Fax
andrew.crane@ago.mo.gov

Attorneys for Appellant

Certificates of Service and Compliance

I hereby certify that a copy of the above was filed electronically through Missouri Case.Net on February 11, 2019. Counsel for Respondent will be served through the Missouri Case.Net system on the same day.

The undersigned also certifies that the foregoing brief complies with the limitations in Rule 84.06(b) and that the brief contains 2,716 words.

/s/ Andrew J. Crane
Assistant Attorney General