MISSOURI COURT OF APPEALS
WESTERN DISTRICT

DONALD JOHNSON

APPELLANT,

v.

MISSOURI DEPARTMENT OF CORRECTIONS

RESPONDENT.

DOCKET NUMBER WD84335

DATE: December 14, 2021

Appeal From:

Cole County Circuit Court
The Honorable Daniel R. Green, Judge

Appellate Judges:

Division Three: Lisa White Hardwick, Presiding Judge, Gary D. Witt, Judge and Edward R. Ardini, Jr., Judge

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Attorneys:

Edward S. Thompson, St. Louis, MO, for appellant.

Andrew J. Crane, Jefferson City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

DONALD JOHNSON, APPELLANT,
v.
MISSOURI DEPARTMENT OF CORRECTIONS, RESPONDENT.

WD84335 Cole County

Before Division Three Judges: Lisa White Hardwick, Presiding Judge, Gary D. Witt, Judge, and Edward R. Ardini, Jr., Judge

Donald Johnson ("Johnson") appeals the Circuit Court of Cole County's ("trial court") grant of judgment on the pleadings in favor of Missouri Department of Corrections ("DOC"). Johnson raises three points on appeal alleging trial court error in granting DOC's Motion for Judgment on the Pleadings and denying Johnson's Petition for Declaratory Judgment and his motion for summary judgment. Point I alleges the trial court erred in relying on *Mitchell v. Phillips*, 596 S.W.3d 120 (Mo banc 2020), in determining the statutory amendments did not apply to class X offenders because the statute analyzed in *Mitchell* was silent as to its retroactive effect, whereas the amendments to section 558.019, RSMo, at issue before the Court specifically provided it was to be applied retroactively. Point II alleges the trial court erred because it drew an artificial distinction between minimum sentences based on convictions and minimum sentences based on commitments to DOC, and it found that because the sentencing court memorialized his class X offender status in the court's sentence and judgment, it was beyond the power of the legislature to alter. Point III alleges the trial court erred in concluding the transfer of the former attempt statute, section 564.011 to section 562.012, RSMo, eliminated the distinction between completed offenses and inchoate offenses, and therefore an ambiguity now exists requiring the trial court to apply the rule of lenity.

AFFIRMED.

Division Three holds:

Section 558.019 has been amended through numerous legislative acts since Johnson committed the charged offenses in 1993. At the time Johnson committed the charged offenses, section 558.019 provided that Class X offenders were required to be sentenced to a minimum prison term of eighty percent of their sentences before being eligible for parole. As a Class X offender, this minimum prison term became part of Johnson's sentence and judgment and was memorialized by the sentencing court. Subsequent amendments to section 558.019 shifted parole eligibility from the trial court to the DOC and is now applied by the DOC as an administrative determination of eligibility for parole based on prior prison commitments to the DOC. A 2019 amendment to section 558.019 provides that offenders who were convicted of certain offenses

"prior to August 28, 2019, shall no longer be subject to the minimum prison term provisions" under the statute. Section 558.019.6 (2019 Supp.).

The 2019 amendment does not apply to Johnson as a Class X offender because Johnson's minimum prison term provision was part of his judgment and sentence, which "expressly mandated his term of imprisonment be served without probation or parole." *See Mitchell*, 596 S.W.3d at 124. The 2019 amendment also only grants relief to offenders who were subject to the minimum prison term provisions *under subsection 2* of the statute. But the current state of subsection 2 differs substantively from its prior version under which Johnson was sentenced. Class X offenders were sentenced based on prior convictions, whereas offenders' parole eligibility is now based on prior commitments to the DOC. Therefore, Johnson was never subject to the "minimum prison term provisions under subsection 2." See section 558.019.2 (2019 Supp.).

Opinion by: Gary D. Witt, Judge December 14, 2021

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