



In the Missouri Court of Appeals Eastern District

DIVISION ONE

STATE OF MISSOURI,	) No. ED109264
	)
Appellant,	) Appeal from the Circuit Court of
	) Jefferson County
vs.	)
	) Honorable Victor J. Melenbrink
JOSEPH E. VAUGHN,	)
	)
Respondent.	) Filed: December 28, 2021

I. Introduction

The State of Missouri (“State”) appeals from the circuit court’s order granting the motion to dismiss criminal charges filed against Joseph E. Vaughn (“Defendant”). On appeal, the State argues that the circuit court erred in granting Defendant’s motion to dismiss because § 195.205¹ “effectively amended” §§ 579.015 and 579.074, the drug and drug paraphernalia possession statutes the State charged Defendant with violating, therefore § 1.160 should apply to prohibit retroactive application of § 195.205.

We affirm.

¹ All references to § 195.205 are to Mo. Rev. Stat. Cum. Supp. 2017. All other statutory references are to Mo. Rev. Stat. 2016, unless otherwise noted.

II. Factual and Procedural Background

On April 1, 2017, police responded to a call about an attempted suicide by drug overdose. Police found Defendant unconscious, with a syringe sticking out of his sock and eight empty capsules lying nearby. At least one of the capsules had contained fentanyl, a controlled substance. On August 28, 2017, Missouri's "Good Samaritan Law," § 195.205, went into effect. The statute states:

A person who, in good faith, seeks or obtains medical assistance for someone who is experiencing a drug or alcohol overdose or other medical emergency or a person experiencing a drug or alcohol overdose or other medical emergency who seeks medical assistance for himself or herself or is the subject of a good faith request shall not be arrested, charged, prosecuted, convicted, or have his or her property subject to civil forfeiture or otherwise be penalized for the following if the evidence for the arrest, charge, prosecution, conviction, seizure, or penalty was gained as a result of seeking or obtaining medical assistance:

- (1) Committing a prohibited act under section 579.015, 579.074, 579.078, or 579.105;

§ 195.205.2 (footnote omitted). It was passed earlier in 2017 as part of S.B. 501, an act "[t]o repeal sections 191.227, 195.206, 197.040, 197.050, 197.070, 197.071, 197.080, 197.100, 334.010, 334.036, 334.735, 337.010, 337.025, 338.010, and 345.051, RSMo, and to enact in lieu thereof twenty-four new sections relating to health care, with an effective date for certain sections."

The State filed a complaint and probable cause statement against Defendant on April 5, 2018. The case was later bound over to the circuit court where the State filed an information on January 6, 2020, charging Defendant with one count of the class D felony of possession of a controlled substance under § 579.015 and one count of the class D misdemeanor of unlawful possession of drug paraphernalia under § 579.074.

Defendant filed a motion to dismiss with prejudice, arguing that § 195.205 prohibits the State from charging, prosecuting, or convicting him for violating the possession statutes. The circuit court initially denied Defendant’s motion to dismiss, finding that § 195.205 is a substantive statute that could not be applied retroactively. Defendant then sought reconsideration of the decision, to which the circuit court agreed. The circuit court held a hearing on October 29, 2020, and granted Defendant’s motion to dismiss. In its order, the circuit court noted that § 195.205 is “highly unusual” and “does not require a retroactivity analysis” because it “concerns actions that have not yet occurred[] and would therefore necessarily take place after the effective date of § 195.205.” The circuit court concluded that “the particular language of § 195.205 does not fall within the purview of § 1.160.”

This appeal follows.²

III. Standard of Review

We generally review a circuit court’s decision to grant a motion to dismiss criminal charges for an abuse of discretion. *State v. Hunter*, 626 S.W.3d 867, 879 (Mo. App. E.D. 2021), *transfer denied* (Aug. 31, 2021). However, when the only issue presented is the legal matter of statutory interpretation, we review the circuit court’s decision *de novo*. *State v. R.J.G.*, 632 S.W.3d 359, 364 (Mo. banc 2021).

IV. Discussion

“The primary rule of statutory interpretation is to give effect to the legislative intent as reflected in the plain language of the statute.” *State v. Knox*, 604 S.W.3d 316, 320 (Mo. banc 2020) (quoting *State v. Salazar*, 236 S.W.3d 644, 646 (Mo. banc 2007)). We must also consider

² When a motion to dismiss criminal charges is granted, and the State “is precluded from maintaining the action in the forum chosen, it is a final judgment, irrespective of whether it is denominated ‘with prejudice’ or ‘without prejudice.’” *State v. R.J.G.*, 632 S.W.3d 359, 363 (Mo. banc 2021) (internal quotation marks omitted) (quoting *State v. Smothers*, 297 S.W.3d 626, 631 (Mo. App. W.D. 2009)).

the context of a statute and not read any portion of it in isolation. *Hunter*, 626 S.W.3d at 874. In addition, the rule of lenity requires us to construe ambiguous criminal statutes strictly against the State. *Knox*, 604 S.W.3d at 320. “This rule, however, does not require a reviewing court to dispense with common sense or to ignore an evident statutory purpose.” *Philyow v. State*, 554 S.W.3d 567, 570 (Mo. App. E.D. 2018) (quoting *State v. Stewart*, 113 S.W.3d 245, 249 (Mo. App. E.D. 2003)).

The State argues that the circuit court erred in granting Defendant’s motion to dismiss because § 195.205 “effectively amended” the possession statutes, therefore bringing it within the scope of § 1.160 and barring retroactive application. Defendant responds that § 195.205 is simply a new statute, thus § 1.160 does not apply.

Section 1.160, Missouri’s savings statute, “continues in force repealed laws until proceedings commenced thereunder, regardless of their nature, might be completed.” *Mitchell v. Phillips*, 596 S.W.3d 120, 125 (Mo. banc 2020), *reh’g denied* (Mar. 31, 2020) (internal quotation marks omitted) (quoting *City of Kirkwood v. Allen*, 399 S.W.2d 30, 35 (Mo. banc 1966)). Without the savings clause, a repealing or amending act would “obliterate[]” the prior version of the law as though it had never existed. *Id.* However, § 1.160 does not apply to new statutory provisions:

In determining whether § 1.160 bars retroactive application of an existing statute, courts use a two-prong inquiry. First, we must determine whether the existing statute is a new provision or if it repealed or amended a previously existing provision. *If the existing statute is a new provision, then it is outside the scope of § 1.160, and retroactive application is not barred by § 1.160.* But, if the existing statute repealed or amended a previously existing provision, then we must determine whether the repealed or amended provision affects the prosecution, penalty, or punishment of the offense at issue. If the repealed or amended provision does not affect the prosecution, penalty, or punishment, then it again falls outside the scope of § 1.160, and retroactive application is not barred by § 1.160. If, on the other hand, the repealed or amended provision does affect the

prosecution, penalty, or punishment of the offense at issue, then it is within § 1.160's bar on retroactive application and cannot be applied retroactively unless it is merely procedural.

Fields v. Missouri Bd. of Prob. & Parole, 559 S.W.3d 12, 17–18 (Mo. App. W.D. 2018) (emphasis added) (footnotes and citations omitted) (citing *State ex rel. Nixon v. Russell*, 129 S.W.3d 867, 870–71 (Mo. banc 2004); *State v. Sumlin*, 820 S.W.2d 487, 490 (Mo. banc 1991); *Prapotnik v. Crowe*, 55 S.W.3d 914, 918 (Mo. App. W.D. 2001)). “It is only when a statutory provision is repealed or amended before adjudication is complete and direct review exhausted that [§] 1.160 saves the liability, punishment, and prosecution arising under the repealed provision and continues the statute in force until proceedings commenced thereunder, regardless of their nature, might be completed.” *Mitchell*, 596 S.W.3d 120 at 126 (internal quotation marks omitted). The savings statute's scope is limited, and its purpose is narrow. *Id.*

Although the General Assembly enacted § 195.295 as a new statute (and referred to it as such), the State nevertheless argues that § 1.160 applies to this case because § 195.205 “effectively amended” the possession statutes. The State primarily relies on the Supreme Court's holding in *State v. Knapp*, 843 S.W.2d 345 (Mo. banc 1992), to support its position that one statutory provision can substantively amend the content of another. In *Knapp*, the Supreme Court held that § 1.205³ substantively amends § 565.024, the involuntary manslaughter statute, to include an unborn child in the definition of “person.” *Id.* at 349. But the Supreme Court did not conduct such an analysis for the purposes of reviewing the statute under § 1.160, and it stressed the narrowness of its holding. *See id.* at 347–48 (“Without deciding whether § 1.205 applies to other statutes, we conclude that it applies at least to the involuntary manslaughter statute.”). Instead, the Supreme Court noted the importance of the General Assembly's intent:

³ All statutory references in *Knapp* are to Mo. Rev. Stat. 1986.

Reading all subsections of § 1.205 together and considering especially the express language of Subsection 2 that “... the laws of this state shall be interpreted and construed ...,” it is clear that § 1.205 is intended to apply to at least some other statutes.... Furthermore, these two statutes, both of which refer to the term “persons,” are related—one defines the term “persons” for the other.

Id. at 347 (final alteration added). Basically, § 565.024 could not be understood without the definition provided by § 1.205, and the General Assembly intended it that way. In this case, however, § 579.015.1 states that “[a] person commits the offense of possession of a controlled substance if he or she knowingly possesses a controlled substance, *except as authorized* by this chapter or chapter 195,”⁴ while § 195.205.2 expressly references the possession statutes. But a plain language reading of § 195.205 does not indicate that the General Assembly intended it to substantively amend either of the possession statutes. Nothing in § 195.205 *authorizes* unlawful possession of controlled substances or drug paraphernalia; rather, the statute bars the State from arresting, charging, prosecuting, convicting, seizing the property of, or penalizing an individual if the State obtains its evidence in a particular manner. *Cf. State ex rel. Jones v. Nolte*, 350 Mo. 271, 285, 165 S.W.2d 632, 638 (1942) (“In the first place, a statute of limitations bars the remedy but does not destroy the right. It is procedural only.”); *State v. Casaretto*, 818 S.W.2d 313, 316 (Mo. App. E.D. 1991) (defining a criminal statute of limitations as procedural). That does not mean that any previously prohibited activities became legal due to the passage of § 195.205—possession remains prohibited, just as it was prohibited before. Accordingly, the plain language of § 195.205 suggests no legislative intent to amend either of the possession statutes.

The Supreme Court further highlighted the context of the two statutes in *Knapp*. “It is ... clear that the legislature intended for § 1.205 to apply to § 565.024, in particular, because both

⁴ Section 579.074 does not contain a similar provision.

statutes were passed in the same legislative session, on the same day, and as part of the same act, H.B. 1596.” 843 S.W.2d at 347. In contrast, the General Assembly enacted § 195.205 as a new statutory provision that did not repeal or amend any previously existing statute. *Cf. Russell*, 129 S.W.3d at 870 (“Section 558.016.8 is a new statutory provision; it does not repeal or amend any previously existing statute.”). Furthermore, the General Assembly did not enact § 195.205 and the possession statutes on the same day or in the same act. The General Assembly, which is presumed to operate with “a full awareness and complete knowledge of the present state of the law,” *State v. Rumble*, 680 S.W.2d 939, 942 (Mo. banc 1984), chose to enact § 195.205 as an entirely new statutory provision, rather than as an amendment to any prior-existing provisions. The General Assembly even referred to the statute as a new statute provision in S.B. 501. Moreover, “[w]here the legislature amends a statute, it must do so explicitly. Amendments by implication are not favored.” *LeSage v. Dirt Cheap Cigarettes & Beer, Inc.*, 102 S.W.3d 1, 4 (Mo. banc 2003) (internal quotation marks omitted) (quoting *Fisher v. Waste Mgmt. of Missouri*, 58 S.W.3d 523, 525 (Mo. banc 2001)). The General Assembly thus gave no indication that it intended to amend either of the possession statutes for the purposes of § 1.160.

Ultimately, *Knapp* stands for the proposition that, while a statute *can* amend another statute, *the General Assembly must intend for it to do so*. See *Knapp*, 843 S.W.2d at 349 (observing that the purpose of § 1.205 was to substantively amend the involuntary manslaughter statute). See also *State v. Sumlin*, 820 S.W.2d 487, 490 (Mo. banc 1991) (noting a legislative intent to amend in the context of § 1.160). Here, however, there is no evidence that the General Assembly intended to amend either of the possession statutes when it enacted § 195.205.

In sum, the “highly unusual” § 195.205 falls outside the scope of § 1.160, and the circuit court did not err in granting Defendant’s motion to dismiss. The plain language of § 195.205

indicates that the General Assembly wanted to enact it as a new statutory provision, not as one meant to amend the possession statutes, “effectively” or otherwise. *Russell*, 129 S.W.3d at 870.

The State’s point is denied.

V. Conclusion

For the reasons mentioned above, we affirm the circuit court’s dismissal of the charges against Defendant.

A handwritten signature in cursive script, appearing to read "Kelly C. Broniec", written over a horizontal line.

Kelly C. Broniec, Judge

Kurt S. Odenwald, P.J. and
John P. Torbitzky, J. concur.