

Summary of SC90585, *Damon Feldhaus v. State of Missouri*

Appeal from the St. Charles County circuit court, Judge Daniel Pelikan
Argued and submitted March 17, 2010; opinion issued April 20, 2010

Attorneys: Feldhaus was represented by Gwenda R. Robinson of the public defender's office in St. Louis, (314) 340-7662, and the state was represented by Robert J. Bartholomew and Shaun J. Mackelprang 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 convicted of driving while under the influence of alcohol and drugs and sentenced to prison as a chronic offender appeals the denial of post-conviction relief, arguing the statute defining "chronic offender" is void for vagueness. In a unanimous decision written by Judge Zel M. Fischer, the Supreme Court of Missouri affirms the circuit court's judgment. The statute is not void for vagueness, either on its face or as applied to the facts of the man's case.

Facts: Damon Feldhaus was stopped in June 2007 for driving while intoxicated and in November 2007 for driving under the influence of marijuana. The state charged Feldhaus with one count of the class B felony of driving while intoxicated for the June incident and one count of the class B felony of driving under the influence of a drug for the November incident. In each case, the state charged Feldhaus as a chronic offender because he previously had pleaded guilty in circuit court to four or more intoxicated-related offenses. Feldhaus pleaded guilty to both counts in an agreement in which the state agreed to recommend two concurrent terms of eight years in prison. The trial court accepted both pleas, found Feldhaus guilty beyond a reasonable doubt, found Feldhaus was a chronic offender and sentenced him to two concurrent terms of eight years in prison in accord with the plea agreement. Feldhaus subsequently but timely sought post-conviction relief, alleging he was denied due process of law because section 577.023, RSMo Supp. 2008, which defines "chronic offender," is void for vagueness. In April 2009, the circuit court overruled Feldhaus' motion, concluding that section 577.023 was not void for vagueness. Feldhaus appeals.

AFFIRMED.

Court en banc holds: The circuit court did not plainly err in overruling Feldhaus' motion for post-conviction relief. Feldhaus waived his claim of void for vagueness by raising it in his motion for post-conviction relief, thereby not raising the issue at the earliest opportunity and before his guilty plea. Even if Feldhaus had preserved his constitutional challenge, it fails because section 577.023 is not unconstitutionally vague. The void-for-vagueness doctrine ensures that laws give fair and adequate notice of proscribed conduct and protects against arbitrary and discriminatory enforcement. Here, section 577.023.1(2) clearly defines a "chronic offender" and sets forth explicit standards necessary to apply the enhanced penalty of a class B felony. It does not leave a person of ordinary intelligence to guess at its meaning but makes clear that a person who has four or more intoxication-related offenses may be convicted of a class B felony. When applied to the facts of this case, Feldhaus was given ample notice by the clear language of section 577.023 that his four prior intoxication-related offenses were proscribed conduct subjecting him to an enhanced penalty up to that of a class B felony, and he does not plead any facts indicating the state was arbitrary or discriminatory in applying this statute.