

No. 1-10-0746

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IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County
)	
v.)	No. 093008235
)	
WILLIAM SANCHEZ,)	The Honorable
)	Jill Cerone-Marisie,
Defendant-Appellant.)	Judge Presiding.

JUSTICE STERBA delivered the judgment of the court.
Presiding Justice Lavin and Justice Pucinski concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court did not err in denying defendant's motion to dismiss and motion for a new trial because defendant was charged with a misdemeanor offense before the delayed effective date of the following two amendments: (1) expansion of the definition of a "delinquent minor" to include minors who are 17 years of age and (2) expansion of the juvenile court's exclusive jurisdiction to include minors charged with a misdemeanor offense who are 17 years of age.

¶ 2 The circuit court found Defendant William Sanchez guilty of criminal trespass to real property. Sanchez appeals the circuit court's denial of his motion to dismiss and motion for a new trial. Sanchez contends the circuit court erred in denying his motions because amendments to the Juvenile Court Act (Act) required the dismissal of the proceedings against him in the circuit court and the transfer of the case to the juvenile court. The amendments expanded the

definition of "delinquent minor" to include minors 17 years of age charged with a misdemeanor offense and expanded the juvenile court's jurisdiction to incorporate proceedings against those minors. Sanchez claims that because the amendments were procedural in nature, the amendments should be applied retroactively, which required the transfer of his case to the juvenile court. For the reasons that follow, we affirm the judgment of the circuit court.

¶ 3 *Background*

¶ 4 Sanchez was charged with the offense of criminal trespass to real property at Harlem & Irving Park Plaza on December 21, 2009. 720 ILCS 5/21-3(a)(2) (West 2008). Mall security officer Callaghan previously issued a citation to Sanchez notifying him not to return to the mall or he would be arrested for criminal trespass to property. On December 21, 2009, Sanchez returned to the mall. Callaghan “physically recognized Defendant standing near the customer service desk” and “recalled having prior contact” with Sanchez. Believing that he had previously issued a citation to Sanchez, Callaghan stopped him. Callaghan asked Sanchez if he had been cited before and had permission to be at the mall, “because there is a protocol to allow people to return” if previously cited. Sanchez responded no, and that he had permission to be at the mall. Believing this to be untrue, Callaghan asked Sanchez to accompany him to the mall security office to verify that a prior citation was issued. Sanchez cooperated with the request. Upon closer investigation, Callaghan’s belief was correct. He did issue a previous citation to Sanchez, which was still active. Callaghan then contacted the local police department. A police officer arrived at the mall and arrested Sanchez for criminal trespass to real property. When the complaint was brought against him and during trial, Sanchez was 17 years old. His 18th birthday was on October 21, 2010.

¶ 5 The circuit court on January 6, 2010 appointed a public defender to represent Sanchez. On February 18, 2010, Sanchez filed a motion to dismiss the charges alleging that the circuit court lacked jurisdiction because the "Delinquent Minor" and "Exclusive Jurisdiction" sections of the Act were amended to expand the juvenile court's jurisdiction to include individuals 17 years of age charged with a misdemeanor offense. The amendments became effective on January 1, 2010, which Sanchez noted was before his court appearance. Sanchez also claimed that the two amendments should be applied retroactively, because the amendments were procedural in nature and the legislative intent was for the amendments to be retroactive. Thus, Sanchez asserted that his case should be transferred to the juvenile court. The circuit court denied the motion finding that the legislature intended prospective application of the amendments. Sanchez's case proceeded to a bench trial. The circuit court found Sanchez guilty of criminal trespass to real property and sentenced him to six months of court supervision. The circuit court also ordered Sanchez not to go to Harlem & Irving Park Plaza and imposed on him a curfew of 9:30 p.m. on weekdays and 11:30 p.m. on weekends.

¶ 6 On March 4, 2010, Sanchez filed a motion for new trial *instanter*, which re-alleged Sanchez's jurisdiction claim. The circuit court denied Sanchez's motion. Sanchez timely appealed.

¶ 7 *Analysis*

¶ 8 The sections of the Act at issue in this appeal are the definition of "delinquent minor" and the juvenile court's "exclusive jurisdiction." The effective date of these amended sections was January 1, 2010.

¶ 9 The amended definition of "Delinquent Minor" states:

"Any minor who prior to his or her 17th birthday has violated or attempted to violate, regardless of where the act occurred, any federal or State law, county or municipal ordinance, and any minor who prior to his or her 18th birthday has violated or attempted to violate, regardless of where the act occurred, any federal, State, county or municipal law or ordinance classified as a misdemeanor offense." 705 ILCS 405/5-105(3) (West 2008).

The Act's amended "Exclusive Jurisdiction" section states:

"Proceedings may be instituted under the provisions of this Article concerning any minor who prior to the minor's 17th birthday has violated or attempted to violate, regardless of where the act occurred, any federal or State law or municipal or county ordinance, and any minor who prior to his or her 18th birthday has violated or attempted to violate, regardless of where the act occurred, any federal, State, county or municipal law or ordinance classified as a misdemeanor offense. If before trial or plea, an information or indictment is filed that includes one or more charges under the criminal laws of this State and additional charges that are classified as misdemeanors that are subject to proceedings under this Act, all of the charges arising out of the same incident shall be prosecuted under the criminal laws of this State. If after trial or plea the court finds that the minor committed an offense that is solely classified as a misdemeanor, the court must proceed under Section 5-705 and 5-710 of this Act. Except as provided in Sections 5-125, 5-130, 5-805, and 5-810 of this Article, no minor who was under 17 years of age at the time of the alleged offense may be prosecuted under the criminal laws of this State." 705 ILCS 405/5-120 (West 2008).

¶ 10 On appeal, Sanchez contends that the circuit court erred in denying his motion to dismiss and motion for a new trial because based on the two amended statutes, the circuit court lacked jurisdiction to dispose of his case. Sanchez claims that because the amended sections of the Act became effective on January 1, 2010, and he first appeared in court on January 6, 2010, the amended sections apply to his case. Sanchez contends that the circuit court's failure to transfer the case to the juvenile court contradicts the legislature's intent in amending the statutes, which was to protect and provide services to juveniles 17 years of age charged with misdemeanor offenses. Sanchez also contends that the circuit court erred by failing to transfer the case to juvenile court because the amended changes in the statute were procedural in nature and not substantive. As such, Sanchez contends that no true retroactive impact existed, and the amended statutes should be applied retroactively.

¶ 11 The State responds that the circuit court had jurisdiction because the amendments applied prospectively. The State notes that Sanchez's conduct occurred on December 21, 2010, and the statutes became effective on January 1, 2010. The State claims that one goal of the legislature in amending the statutes was to protect and provide services and support to juveniles not otherwise available in adult court. The State also claims that the legislature's other goal was to control the financial impact of the two amendments and not to overwhelm or exhaust the resources existing at the juvenile courts. The State contends that applying the amendments retroactively would defeat the legislature's second goal.

¶ 12 In this appeal, we must determine whether the amended statutory sections apply prospectively or retroactively. This task entails statutory construction and, thus, we employ a *de novo* standard of review. *Deicke Center v. Illinois Health Facilities Planning Board*, 389 Ill. App. 3d 300, 303 (2009). To determine an amendment's temporal reach, the following two

questions must be addressed: (1) whether the legislature has expressly prescribed the statute's proper temporal reach, and if no, (2) whether the amendment has a retroactive effect. *People v. Ramsey*, 192 Ill. 2d 154, 172-73 (2000). If the legislature's intent regarding the temporal reach of the statute is clear, then there is no need to resort to judicial rules of statutory interpretation. *Galloway v. Diocese of Springfield in Illinois*, 367 Ill. App. 3d 997, 1001-02 (2006).

¶ 13 However, when an amendment contains no express intent, the court must then determine whether the amendment would have a "retroactive impact." *Commonwealth Edison Co. v. Will County Collector*, 196 Ill. 2d 27, 38 (2001). An amendment has a "retroactive impact" if it " 'would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed.' " *Id.* (quoting *Landgraf v. USI Film Products*, 511 U.S. 244, 280 (1994)). If any of these "retroactive impacts" exist, then retroactive application does not apply absent clear congressional intent favoring such retroactive application. *Id.*

¶ 14 Generally, postponement of an effective date may "constitute evidence that the legislature intended the amendment to have a prospective application." A presumption exists against applying a statutory amendment retroactively. *Landgraf*, 511 U.S. at 286. Amendments that may be applied retroactively typically "serve entirely benign and legitimate purposes, whether to respond to emergencies, to correct mistakes, to prevent circumvention of a new statute in the interval immediately preceding its passage, or simply to give comprehensive effect to a new law Congress considers salutary." *Id.* at 268.

¶ 15 In determining the temporal reach of a statutory amendment, we are guided by the principles set forth in the seminal case of *Landgraf v. USI Film Products*, 511 U.S. 244 (1994). In *Landgraf*, the United States Supreme Court applied a newly enacted statute prospectively and

held that the statute did not apply to cases pending on appeal when the statute was enacted. *Id.* at 286. In reaching that conclusion, the United States Supreme Court set forth the following test to determine the temporal reach of an amendment:

"When a case implicates a federal statute enacted after the events in suit, the court's first task is to determine whether Congress has expressly prescribed the statute's proper reach. If Congress has done so, of course, there is no need to resort to judicial default rules. When, however, the statute contains no such express command, the court must determine whether the new statute would have retroactive effect, *i.e.*, whether it would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed. If the statute would operate retroactively, our traditional presumption teaches that it does not govern absent clear congressional intent favoring such a result." *Id.* at 280.

Based on this test, the United States Supreme Court held that the Civil Rights Act of 1991 (1991 Act) did not apply to cases raising a violation of Title VII of the Civil Rights Act of 1964 (Title VII) that were pending on appeal when the 1991 Act was enacted. *Id.* at 247. The United States Supreme Court reasoned that retroactive application of the statute would require employers accused of violating Title VII to be held accountable according to newly enacted legislation that was not the governing rule of law at the time of their alleged violation. *Id.* at 283. Thus, the employer's liability for past conduct would be increased beyond what it was under the prior existing law. *Id.* The *Landgraf* court also stated that a presumption against statutory retroactivity exists. *Id.* at 286. In *Landgraf*, this court held that the statute's language gave no indication that the legislature intended the 1991 Act to apply to cases arising before its

enactment. *Id.* at 286. Thus, the 1991 Act "did not apply to a Title VII case that was pending on appeal when the statute was enacted." *Id.* at 247.

¶ 16 Illinois adopts the standards set forth in *Landgraf* to determine the temporal reach of a newly enacted or amended statute. *Commonwealth Edison Co.*, 196 Ill. 2d at 39. The Illinois Supreme Court recently addressed the application of an amended statute in *General Motors Corporation v. Pappas*, 242 Ill. 2d 163 (2011). The issue in *Pappas* was whether a newly amended property tax provision should be applied prospectively or retroactively to a case that was pending on appeal when the new statute was enacted. *Id.* The Illinois Supreme Court held that the circuit court did not err in applying the new rate of interest set forth in the new Property Tax Code on taxpayer's judgments prospectively from the statute's effective date. *Id.*

¶ 17 The Illinois Supreme Court in *Pappas* cited to *People v. Brown*, (225 Ill. 2d 188, 201 (1994)), where it stated that "the delayed implementation date of the amendment indicates a clear legislative intent for the prospective application of the provision." *Pappas*, 242 Ill. 2d 163 (citing *Brown*, 225 Ill. 2d at 201-02). In *Brown*, a statute was enacted in June of 1998, with an effective date of January 1, 1999. *Brown*, 225 Ill. 2d at 201. The Illinois Supreme Court in *Brown* acknowledged that a delayed effective date was clear evidence that the legislature intended the amendment to apply prospectively to causes of action commenced on or after the statute's effective date. See *Id.* Thus, consistent with *Brown*, the *Pappas* court reasoned that the delayed effective date of the amendment to the Property Tax Code indicated a clear legislative intent for the prospective application of the amended provision. Therefore, the *Pappas* court held that the circuit court did not err in applying the new statute's provisions prospectively from the delayed effective date.

¶ 18 *Pappas* instructs that statutory amendments should operate prospectively unless the legislative intent for retroactive application clearly appears from the express language used in the amendment. As such, we must examine the express language used in the amendments. The amendments' text does not expressly incorporate an effective date or indicate the temporal reach of the amendment. We must, however, also consider the language of the public act enacting the amendments. Public Act 95-1031 (Public Act) amended the "Delinquent minor" definition (705 ILCS 405/5-105(3) (West 2008)) and "Exclusive jurisdiction" (705 ILCS 405/5-120 (West 2008)) sections of the Act. Pub. Act 95-1031 (eff. Jan. 1, 2010). Regarding the effective date of the amendments, the Public Act expressly stated the following: "This Act takes effect upon becoming law, except that the amendatory changes to Sections 5-105 and 5-120 of the Juvenile Court Act of 1987 take effect January 1, 2010." Pub. Act 95-1031 (eff. Jan. 1, 2010). The Public Act listed "February 10, 2009" as the amendment's "Approved" date. Pub. Act 95-1031 (eff. Jan. 1, 2010). The Public Act's "Effective" date contained the following express language: "Generally effective February 10, 2009; some parts effective January 1, 2010." Pub. Act 95-1031 (eff. Jan. 1, 2010).

¶ 19 Here, the legislature expressly delayed the amendments' effective date from February 10, 2009, when the amendments were approved, to January 1, 2010. As such, the legislature's intent was that the amendments would operate prospectively from their effective date of January 1, 2010. Applying the amendments retroactively from their effective date of January 1, 2010 would indirectly render the amendments' effective date as of the approved date. Such application is in direct contradiction with the legislature's intent of delaying the effective date of the amendments, and the express language used that provided for a delayed effective date. The legislature's intent is clear that the amendments would not be effective on the approved date.

The legislature's intent is also clear that the amendments would be effective on a date in the future. The postponement of an effective date is direct evidence that the legislature did not intend a retroactive application of an amendment. *People v. Blanks*, 361 Ill. App. 3d 400, 410 (2005). The Public Act's express language fails to support a claim that the legislature intended a retroactive application of the amendments.

¶ 20 The legislative history of an amendment provides further insight regarding the legislature's intended temporal reach of a statutory amendment. During the legislative session, the following debate occurred in the House of Representatives:

Reboletti: "What would happen to a defendant that the day before this Bill will go into effect was charged with a misdemeanor and an adult and then the next if the . . . If they're the same individual picked up a case, will go to juvenile. Is that going to change this to retroactive? What's going to happen to all the 17-year-olds that were charged as adults?"

Collins: "Well, first of all, it's not going to ha . . . it wasn't . . . Won't even go into effect until next year at this time. So, we won't even be dealin' with those 17-year-olds and *it's not retroactive*. And . . . and this is only misdemeanor cases; it has nothing to do with felonies. Today, if a kid was 14-, 15- 16-years-old and they did something that would warrant them going to adult court, they will still be charged as an adult. This has nothing to do with that. These are nonviolent offenses and these kids normally would get probation anyway." (Emphasis added). 95th Gen. Assem., House Proceedings, July 26, 2007, at 35.

¶ 21 The legislative debates demonstrate that the legislature was concerned about the potential impact the amendment would have on a 17 year old minor who committed a misdemeanor

offense immediately prior to the amendments' effective date. In addressing this concern, Representative Collins expressly stated that the amendment would not be effective until a future date and the amendment is *not* retroactive. Here, the legislature's intent is clear. The legislature did not intend the amendment to apply retroactive. The Public Act's express language and the legislative history underlying the amendments' enactment do not rebut the presumption that statutory amendments apply prospectively. *People v. DiGirolamo*, 179 Ill. 2d 24, 49 (1997). Accordingly, the amendments apply prospectively as of the effective date of January 1, 2010. Since Sanchez was charged with the misdemeanor before the amendments' effective date, the amended statutory provisions are inapplicable to his case and the circuit court did not err in denying his motion to dismiss or motion for a new trial.

¶ 22 The legislative history indicates that one goal of the amendment was to remove 17 years olds from facing proceedings in adult court. During the legislative debates, Representative Bellock stated that "[t]his is a Bill that we're trying to save kids from getting into the adult system of the Department of Corrections. We want to hold these seventeen-year-olds that we think we can save them from entering into that adult system by trying them as juveniles so that they don't have a permanent record." 95th Gen. Assem., House Proceedings, May 31, 2008, at 207. Representative Durkin also stated that the Bill would "relieve congestion and the cattle calls in the . . . in the felony . . . in the adult courts throughout the State of Illinois. But secondly, we're still talking about seventeen-year-old kids and I think that when we're putting both in the juvenile court they're they are going to get greater oversight, there'll be more . . . They'll have more type of, as I said, oversight and the courts are going to have greater recognition of the things they're doing." 95th Gen. Assem., House Proceedings, May 31, 2008, at 207-08.

¶ 23 While it is true that in enacting the amendments the legislature intended to remove 17 year olds charged with a misdemeanor offense from the adult court's jurisdiction and expand the juvenile court's jurisdiction to include those proceedings, the legislature was also concerned with the financial impact associated with the expansion of the juvenile court's exclusive jurisdiction. To balance the goal of providing 17 year old juveniles with greater supervision provided by the juvenile court than in the adult court with the associated fiscal impact of expanding the juvenile court's jurisdiction, the legislature postponed the effective date of the bill.¹ The legislative history of the amendments indicate that the effective date of the amendment was a concern of the legislature. In fact, instead of an immediate effective date, the legislature amended the bill to delay its effective date.² Thus, the legislature considered immediate application of the amendments, but intended prospective application of the amendments.

¶ 24 Moreover, retroactive application of the amendments would change the entire nature of the proceedings Sanchez faced, and therefore they cannot be considered merely procedural. In the instant case, one of the amendments expands the juvenile court's exclusive jurisdiction to include "any minor who prior to his or her 18th birthday has violated or attempted to violate, regardless of where the act occurred, any federal, State, county or municipal law or ordinance classified as a misdemeanor offense." 705 ILCS 405/5-103(3) (West 2008). An amendment that removes a 17 year old from facing criminal consequences in a circuit court having jurisdiction over adults cannot be considered merely procedural. Although the amendments here do address

¹ During the third reading of House Bill 1517 in the Senate, Senator Cullerton stated the following: "We have also acknowledged that there could be minimal fiscal impact, and so as a result, we've postponed the effective date of the bill till July of next year." 95th Gen. Assem., Senate Proceedings, May 25, 2007, at 27.

² See 95th Ill. Gen. Assem., House Proceedings, July 26, 2007, at 42 (statement of Representative Lang) ("All Senate Amendment #1 did was change the effective date to July '08 instead of an immediate effective date. This Amendment is only about the effective date."

jurisdictional matters, the amendments do not affect the manner in which a court obtains jurisdiction or procedural matters that must be undertaken for a court have jurisdiction over a proceeding. Instead, the amendments divest one court of subject matter jurisdiction over 17 year olds who are charged with misdemeanor offenses and expands the juvenile court's exclusive jurisdiction to now address such cases. While the amendments provide 17 year olds with the protections provided by the juvenile court system, rights afforded to individuals in adult court, such as the right to a jury trial, are now forgone. Thus, retroactive application of these amendments would change the entire nature of the proceedings Sanchez faced, and therefore the amendments cannot be considered merely procedural thereby permitting retroactive application.

¶ 25 In sum, the amendment's express language does not clearly demonstrate that the amendments were intended to apply retroactively from their effective date. Instead, the delayed effective date of the amendments indicates that the legislature intended prospective application of the amendments. Also, the amendments are not merely procedural because the nature of Sanchez's proceedings would be altered if the amendments applied to his case, and his related rights impaired.

¶ 26 Accordingly, we affirm the judgment of the circuit court.

¶ 27 Affirmed.