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IN THE COURT OF APPEALS OF INDIANA

M.H.,
Appellant-Respondent,

v.

State of Indiana,
Appellee-Petitioner.

March 11, 2022

Court of Appeals Case No. 21A-JV-2326

Appeal from the Elkhart Circuit Court

The Honorable Elizabeth A. Bellin, Magistrate

Trial Court Cause No. 20C01-1906-JD-169

Mathias, Judge.

[1] In November 2020, the Indiana Supreme Court held that our juvenile courts lacked subject matter jurisdiction to adjudicate a juvenile delinquent under the dangerous-possession-of-a-firearm statute, Indiana Code section 35-47-10-5 (2018). *K.C.G. v. State*, 156 N.E.3d 1281, 1282 (Ind. 2020). Thereafter, the

Indiana General Assembly enacted emergency legislation to amend Indiana Code section 31-37-1-2 to read in relevant part as follows: "A child commits a delinquent act if, before becoming eighteen (18) years of age, the child commits an act . . . in violation of [I.C. §] 35-47-10-5[.]" P.L. 84-2021 § 1 (effective Apr. 19, 2021).

[2] The only issue in this appeal is a question of law: did the juvenile court here lack subject matter jurisdiction to adjudicate the juvenile a delinquent under I.C. § 35-47-10-5 for an act the juvenile committed prior to the statutory amendment? We hold that the law in effect at the time of the act, as interpreted by our Supreme Court in *K.C.G.*, requires holding that the juvenile court lacked subject matter jurisdiction over the State's petition. We further hold that retroactively applying the statutory amendment would allow juveniles to be punished for acts that, at the time they were committed, were legally not acts for which juveniles could be punished, which would violate a juvenile's right to be free from *ex post facto* laws. Therefore, we reverse and remand with instructions to vacate M.H.'s adjudication as a delinquent under the dangerous-possession-of-a-firearm statute for an act he committed in 2019.

Facts and Procedural History

[3] In June 2019, Elkhart Police Department officers observed M.H. and two other juveniles trespassing and placed all three juveniles under arrest. M.H. then "began to pull away forcefully" from the officers, and, "[d]uring a brief scuffle," M.H. "was tackled to the ground" and handcuffed. Appellant's App. Vol. 2 at

4. Officers then discovered a silver and black .380 caliber handgun on M.H. The handgun was loaded.

[4] The State filed a formal delinquency petition against M.H. and alleged in relevant part[1] that M.H. committed a delinquent act when he was in dangerous possession of a firearm in violation of Indiana Code section 35-47-10-5 (2018). In July, the juvenile court held an initial hearing on the delinquency petition. At that hearing, M.H. admitted to the dangerous possession of a firearm, and the juvenile court adjudicated him a delinquent accordingly.

[5] In November 2020, our Supreme Court held that our juvenile courts lacked subject matter jurisdiction to adjudicate juvenile delinquents under Indiana Code section 35-47-10-5 (2018). *K.C.G.*, 156 N.E.3d at 1282. Following that holding, M.H. filed a motion for relief from judgment under Indiana Trial Rule 60(B)(6)[2] and asserted that, because the juvenile court lacked subject matter jurisdiction to adjudicate him a delinquent under Indiana Code section 35-47-10-5 (2018), that judgment was void *ab initio* and must be vacated. After a hearing, the juvenile court denied M.H.'s motion. This appeal ensued.

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[1] The State also alleged, and the juvenile court adjudicated him to be, that M.H. was a delinquent for resisting law enforcement, as a Class A misdemeanor when committed by an adult, and for railroad trespass, as a Class B misdemeanor when committed by an adult. Neither of those adjudications is relevant to this appeal.

[2] Indiana Trial Rule 60(B)(6) permits a party to move for relief from judgment on the ground that the judgment is "void" and the motion is made "within a reasonable time." The juvenile court found that M.H.'s motion for relief from judgment under that rule was "proper." Appellant's App. Vol. 2 at 39.

Discussion and Decision

[6] M.H. asserts that the trial court erred as a matter of law when it denied his motion for relief from judgment on the ground that the trial court lacked subject matter jurisdiction to adjudicate him a delinquent under Indiana Code section 35-47-10-5 (2018). This issue presents us with a pure question of law. *See, e.g.*, *Anderson v. Wayne Post 64, Am. Legion Corp.*, 4 N.E.3d 1200, 1205 (Ind. Ct. App. 2014), *trans. denied*. As we have explained: "a motion under [Trial Rule] 60(B)(6) alleging the judgment is void requires no discretion on the part of the trial court because either the judgment is void or it is valid. Void judgments can be attacked, directly or collaterally, at any time." *Id.* (quoting *Santiago v. Kilmer*, 605 N.E.2d 237, 239 (Ind. Ct. App. 1992), *trans. denied*) (internal citations omitted). Therefore:

> a trial court has no discretion on how to rule on a Trial Rule 60(B)(6) motion once a judgment is determined to be either void or valid. If a judgment is void, the trial court cannot enforce it and the motion under Rule 60(B)(6) must be granted; if a judgment is valid, the trial court cannot declare it void and the motion must be denied. Thus, we review *de novo* a trial court's judgment on a Rule 60(B)(6) motion.

Id.

[7] Again, in *K.C.G.*, our Supreme Court held that Indiana's juvenile courts lack subject matter jurisdiction to adjudicate juvenile delinquents under Indiana Code section 35-47-10-5 (2018). 156 N.E.3d at 1282. That statute provides:

> A child who knowingly, intentionally, or recklessly possesses a firearm for any purpose other than a purpose described in section 1 of this chapter commits dangerous possession of a firearm, a Class A misdemeanor. However, the offense is a Level 5 felony if the child has a prior conviction under this section or has been adjudicated a delinquent for an act that would be an offense under this section if committed by an adult.

I.C. § 35-47-10-5(a) (2018).

[8] Our Supreme Court explained why that statute failed to authorize our juvenile courts to adjudicate juvenile delinquents for the dangerous possession of a firearm:

> Juvenile courts, as creatures of statute, can adjudicate only those disputes our legislature has authorized. *D.P. v. State*, 151 N.E.3d 1210, 1213 (Ind. 2020). When the legislature sets out "statutory jurisdictional prerequisites", and those are not met, "the juvenile court has no power to hear and decide the matter." *Id.* Relevant here, juvenile courts have "exclusive original jurisdiction" over proceedings in which a "child"—a person less than 18 years of age—is "alleged to be a delinquent child under IC 31-37." *See* I.C. §§ 31-9-1-1, 31-9-2-13(d)(1), 31-30-1-1(1). A "delinquent child" is one who commits a "delinquent act" under Chapter 31-37-1, *id.* § 31-37-1-1, defined as an act "that would be an offense if committed by an adult". *Id.* § 31-37-1-2. Thus, for the State to invoke the juvenile court's jurisdiction, it must allege the respondent is a child who committed an act that would be a crime if an adult did it. *See D.P.*, 151 N.E.3d at 1213.
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> Here, the State filed its petition under Section 31-30-1-1 and incanted Section 31-37-1-2. The petition purports to allege that K.C.G. was a "delinquent child", and that his conduct "would [have been] an offense if committed by an adult", *id.* § 31-37-1-2.

> The alleged conduct, according to the State, was misdemeanor "dangerous possession of a firearm". Yet the dangerous-possession statute defines the offense in terms of a "child" who "knowingly, intentionally, or recklessly possesses a firearm for any purpose other than a purpose described in [IC 35-47-10-1]." I.C. § 35-47-10-5(a). This provision is clear and applies only to children; adults cannot commit dangerous possession of a firearm. Thus, K.C.G.'s alleged possession of a firearm could never be an offense committed by an adult, and the State's nominal allegation that K.C.G. is a "delinquent child" because he committed a "delinquent act" failed as a matter of law, meaning the juvenile court lacked jurisdiction.

K.C.G., 156 N.E.3d at 1283.

[9] The court added the following analysis:

> Perhaps anticipating our "means-what-it-says" interpretive approach, the State points to the second sentence in Subsection 35-47-10-5(a), which provides for an enhancement to a Level 5 felony for a juvenile adjudged delinquent for the dangerous-possession offense: "However, the offense is a Level 5 felony if the child . . . has been adjudicated a delinquent for an act that would be an offense under this section if committed by an adult." *Id.* According to the State, this provision shows the legislature intended that juveniles can be adjudicated delinquent for violating this statute.
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> The State's position is not without force, and it has the virtue of reflecting prevailing law as announced by our court of appeals. *See, e.g.*, *C.C. v. State*, 907 N.E.2d 556, 558 (Ind. Ct. App. 2009); *J.S. v. State*, 114 N.E.3d 518, 519 (Ind. Ct. App. 2018) (affirming delinquency adjudication for dangerous possession of a firearm); *J.G. v. State*, 93 N.E.3d 1112, 1125 (Ind. Ct. App. 2018) (same). But we decline to embrace that approach. Rather than crediting

> the asserted intent behind the criminal statute, I.C. § 35-47-10-5, we give dispositive weight to the plain language of the jurisdictional statute, *id.* § 31-30-1-1. As shown above, the jurisdictional statute establishes that the State must allege the child committed an "act that would be an offense if committed by an adult". *Id.* § 31-37-1-2. Even if the State were correct about legislative intent, we decline to ignore the clear jurisdictional mandate of Section 31-30-1-1 based on an inference from an entirely separate statute.
>
> Our position finds further support from the fact that we have long interpreted criminal statutes strictly against the State, *Suggs v. State*, 51 N.E.3d 1190, 1194 (Ind. 2016), and it is undisputed that the statute at issue here defines a crime with possible penal consequences. . . .

Id. at 1283–84. Finally, the court concluded: "we hold that the juvenile court lacked subject-matter jurisdiction. The State's petition did not (because, as a matter of law, it could not) allege a jurisdictional prerequisite—that K.C.G.'s conduct was 'an act that would be an offense if committed by an adult'." *Id.* at 1285. The court therefore "vacate[d] the juvenile court's adjudication of K.C.G. as a delinquent child for dangerously possessing a firearm" and "remand[ed] with instructions to dismiss the State's petition." *Id.*

[10] Here, M.H.'s motion for relief from judgment merely asked the juvenile court to apply the plain holding of *K.C.G.* That is, relying on *K.C.G.*, M.H. asserted that the juvenile court lacked subject matter jurisdiction to hear the State's petition that M.H. was a delinquent under the dangerous-possession-of-a-firearm statute for his June 2019 possession of a firearm. There is simply no

question that M.H.'s motion for relief for judgment was sound. *See id.* at 1282–85. As a matter of law under *K.C.G.*, M.H. is correct that the juvenile court's adjudication against him under the dangerous-possession-of-a-firearm statute was void on these facts.

[11] Nonetheless, the juvenile court relied on an April 2021 statutory amendment to avoid applying the plain holding of *K.C.G.* In that emergency legislation, the Indiana General Assembly amended Indiana Code section 31-37-1-2 to read in relevant part as follows: "A child commits a delinquent act if, before becoming eighteen (18) years of age, the child commits an act . . . in violation of [I.C. §] 35-47-10-5 . . . ." P.L. 84-2021 § 1 (effective Apr. 19, 2021). But nothing in that amendment speaks to making the amendment retroactive. *See id.*

[12] Applying the amendment retroactively would imperil M.H.'s constitutional right to be free from *ex post facto* laws. It is beyond dispute that penal statutes in effect at the time of an offense are controlling. *E.g.*, *Smith v. State*, 675 N.E.2d 693, 695 (Ind. 1996) ("One of our well established rules of criminal law is that the controlling law is that which is in effect at the time the crime is committed."). As the Supreme Court of the United States has made clear:

> An *ex post facto* law has been defined by this Court as one 'that makes an action done before the passing of the law, and which was innocent when done, criminal; and punishes such action,' or 'that aggravates a crime, or makes it greater than it was, when committed.' *Calder v. Bull*, 3 Dall. 386, 390, 1 L. Ed. 648. . . . The fundamental principle that 'the required criminal law must have existed when the conduct in issue occurred,' Hall, General Principles of Criminal Law (2d ed. 1960), at 58–59, must apply to

> bar retroactive criminal prohibitions emanating from courts as well as from legislatures. . . .

Bouie v. City of Columbia, 378 U.S. 347, 353–54 (1964) (footnote omitted). Here, *K.C.G.* made clear that the juvenile court had no subject matter jurisdiction under the law at the time of M.H.'s purported offense to hear the State's petition. Applying the statutory amendment retroactively would turn an act that was not punishable at the time into a punishable act, which is forbidden. *Id.*

[13] Still, the juvenile court relied on *N.G. v. State* to apply the statutory amendment here retroactively, but that reliance was misplaced. In *N.G.*, our Supreme Court analyzed whether an expungement statute had retroactive effect and held that it did. 148 N.E.3d 971, 975 (Ind. 2020). In so holding, the court stated that, "[a]bsent explicit language to the contrary, statutes generally do not apply retroactively. But there is a well-established exception for remedial statutes." *Id.* at 973.

[14] Here, again, there is no explicit language in the statutory amendment to apply that amendment retroactively. And, while the statutory amendment to our juvenile courts' jurisdiction superseded our Supreme Court's holding in *K.C.G.*, the amendment was not remedial. Rather, it simply expanded the jurisdiction of our juvenile courts to hear petitions where *K.C.G.* had held that our juvenile courts lacked that jurisdiction. The statutory amendment is not analogous to an expungement statute, which exists to "giv[e] ex-offenders relief from the stigma associated with past criminal behavior—a second chance." *Id.* at 975. Retroactively applying the statutory amendment here would not give an alleged

juvenile delinquent a second chance at avoiding penal consequences; it would give the State a second chance at obtaining penal consequences, which, again, is forbidden. The juvenile court erred when it relied on *N.G.* to deny M.H.'s motion for relief from judgment.

[15] The State also attempts on appeal to avoid the obvious and straight-forward application of *K.C.G.* by asserting that *K.C.G.* broke with precedent and declared a new rule that should not be applied retroactively. But, while our Supreme Court acknowledged that there had been some precedent from our Court in upholding juvenile adjudications under the dangerous-possession-of-a-firearm statute, there was no conflicting precedent from the Indiana Supreme Court on the issue. *See id.* at 1283–84. Indeed, our Supreme Court's analysis in *K.C.G.* was rooted in the court's own precedent concerning our juvenile courts' jurisdiction and statutory interpretation. *See id.* We are not persuaded that *K.C.G.* was a novel reading of the law, and we reject the State's assertions to the contrary.

[16] In sum, under the law in effect at the time of M.H.'s actions in June 2019, the juvenile court lacked subject matter jurisdiction to hear the State's petition that M.H. should be adjudicated a delinquent under the dangerous-possession-of-a-firearm statute. Because a challenge to a court's subject matter jurisdiction may be raised at any time, we agree with M.H. that the juvenile court erred when it denied his motion for relief from judgment. We reverse and remand with instructions for the juvenile court to grant M.H.'s motion for relief from

judgment and to vacate M.H.'s adjudication as a delinquent under I.C. 35-47-10-5 (2018).

[17] Reversed and remanded with instructions.

Bailey, J., and Altice, J., concur.