COMMONWEALTH OF KENTUCKY
SUPREME COURT OF KENTUCKY
CASE NO. 2010-SC-000770

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SUPREME COURT

ANTHONY EDWARDS — APPELLANT

v.

APPEAL FROM FRANKLIN CIRCUIT COURT
HON. PHILLIP J. SHEPHERD, JUDGE
CASE NO. 08-CI-01995

COURT OF APPEAL
CASE NO. 2009-CA-000440

MELISSA HARROD, ADMINISTRATOR
OFFENDER INFORMATION SERVICES;
LaDONNA THOMPSON, COMMISSIONER,
DEPARTMENT OF CORRECTIONS — APPELLEES

BRIEF FOR APPELLEES

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Certificate required by CR 76.12(6)

The undersigned does hereby certify that a copy of this brief was served by mail, postage prepaid, this 30th day of August, 2012, upon LaMer Kyle-Griffiths, Co-Counsel for Appellee, Department o Public Advocacy, 100 Fair Oaks Lane, Suite 302, Frankfort, KY 40601; Renée VandenWallBake, Co-Counsel for Appellees, Department of Public Advocacy, 100 Fair Oaks Lane, Suite 302, Frankfort, KY 40601; Honorable Phillip J. Shepherd, Franklin County Courthouse, 669 Chamberlin Ave., Frankfort, KY 40601; and Clerk, Kentucky Court of Appeals, 360 Democrat Drive, Frankfort, KY 40601-9229.

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STATEMENT CONCERNING ORAL ARGUMENT

The Appellees state that oral argument is unnecessary in this case since the issues and law are clearly defined by the briefs of the parties.

COUNTERSTATEMENT OF POINTS AND AUTHORITIES

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COUNTERSTATEMENT OF THE CASE

The Court of Appeals found the relevant facts to be as follows:

> Appell[ee]s seek reversal of the Franklin Circuit Court's determination that the Violent Offender Statute, Kentucky Revised Statutes (KRS) 439.3401(4), is inapplicable to all individuals sentenced as youthful offenders. Because the circuit court applies our Supreme Court's holding in *Commonwealth v. Merriman,* 265 S.W.3d 196 (Ky.2008) too broadly, we reverse.
>
> The appell[ant], Anthony Edwards, pleaded guilty to three counts of robbery in the first degree. Upon reaching his eighteenth birthday, Edwards was given a hearing pursuant to KRS 640.030(2), after which the court determined that Edwards should be released on probation from his previously imposed ten-year sentence. Edwards subsequently violated his probation and probation was revoked. He was then delivered to the custody of the Department of Corrections and classified as a violent offender.
>
> Edwards filed a declaration of rights with the Franklin Circuit Court, arguing that he should not be classified as a violent offender. Relying on *Merriman,* the circuit court determined that Edwards's classification as a violent offender was improper. However, the trial court's determination was based on an overbroad reading of *Merriman.* After carefully analyzing the Unified Juvenile Code, considering the distinctions between probation and parole, and then applying the Supreme Court's holding in *Merriman,* we conclude that KRS 439.3401(4) is not wholly inapplicable to youthful offenders.
>
> (Opinion Affirming, pp. 1-3, (footnote omitted) attached hereto as Appendix A)

ARGUMENT

I. MATERIAL DIFFERENCE EXISTS BETWEEN PROBATION AND PAROLE AND THIS DISTINCTION WAS PROPERLY RECOGNIZED BY THE KENTUCKY COURT OF APPEALS IN APPLING *MERRIMAN.*

Historically, there has been seen to be a "material difference in the status of a defendant following the verdict of guilt and his status after a final judgment has been entered and sentence pronounced." *Lovelace v. Commonwealth,* 285 Ky. 326, 147

S.W.2d 1029, note 17 at 1034 (Ky. App. 1941). Probation relates to action taken before the prison door is closed before final conviction, while parole relates to action taken after the door has been closed. *Commonwealth v. Polsgrove*, 231 Ky. 750, 22 S.W.2d 126 (Ky. App. 1929); *Adkins v. Commonwealth*, 232 Ky. 312, 23 S.W.2d 277 (Ky. App. 1929). Therefore, Kentucky courts have conceptualized "probation" as the suspension of the imposition of a sentence while, after imposition, "parole" suspends execution of a sentence. *Prater v. Commonwealth*, 82 S.W.3d 898 (Ky. 2002).

The legislature is presumed to be aware of the existing law at the time of the enactment of a statute. *Stogner v. Commonwealth,* 35 S.W.3d 831, 835 (Ky. App. 2000). See also *St. Clair v. Commonwealth,* 140 S.W.3d 510, 570 (Ky. 2004); *Shewmaker v. Commonwealth,* 30 S.W.3d 807, 809 (Ky. App. 2000). The legislature has recognized that, although the sentencing provisions of the Kentucky Penal Code now permit trial courts to enter a judgment sentencing a defendant to a sentence of probation without the procedural hurdles required under preexisting law, the pre-judgment and post-judgment distinction remains because "[t]he actual length of [a defendant's] sentence is determined by the parole board as was done under the pre-existing process." KRS 532.060, Official Commentary (Banks/Baldwin 1974).

In the case *sub judice*, the Court of Appeals noted that "[t]his distinction was clearly recognized by the legislature in its enactment of KRS 640.030 and 640.075." (Opinion Reversing, p. 5). The legislature specifically gave the circuit court the authority to reconsider probation; i.e., to reconsider the imposed sentence. Parole on the other hand is a function of the executive branch-the parole board-and deals with the length of service required for the sentence imposed. See *Prater,* 82 S.W.3d at 905, 907 (noting that the

distinction between parole and probation is necessitated by the separation of power between the judicial and executive branches). In essence, the Unified Juvenile Code gives the circuit court an opportunity to adjust the sentence, not to determine how much of the sentence must be served. Therefore, the reconsideration of probation afforded under the Unified Juvenile Code is unaffected by the parole limits set forth in KRS 439.3401(4). Concerning the matter at hand, the Court of Appeals correctly held that "[s]uch a finding is consistent with the statute and the reasoning set forth in *Merriman.*" Given the vast differences between "probation" and "parole," a court cannot supply or substitute "parole" in a statute, no matter how desirable it might be to supply or substitute the term. *Mullins v. Commonwealth*, 956 S.W.2d 222 (Ky. App. 1997).

Therefore, the Appellant's reliance upon *Commonwealth v. Merriman*, 265 S.W.3d 196 (Ky. 2008) for the proposition that he cannot be considered a violent offender is misplaced. *Merriman* deals solely with the eligibility for probation and does not consider or discuss the parole aspect of KRS 439.3401. When read in whole, the *Merriman* decision instead supports the idea that once a court chooses to forego probation and treat a youthful offender as an adult for the purpose of sentencing, the provisions of KRS 439.3401 are applicable and the Appellant is subject to the eighty-five percent (85%) limitation on parole eligibility.

Merriman involved two different youthful offenders, both of whom were denied probation by the trial court after they were determined to be statutorily ineligible, because they came within the violent offender restrictions of KRS 439.3401. The court sought to reconcile the differences between KRS 640.030(2) and KRS 439.3401. The court found that "by the very language of KRS 640.030(2), it is apparent that the violent offender

statute cannot act to prevent consideration of probation or conditional discharge on the youthful offender's eighteenth birthday." *Supra* at 200. The opinion relies completely on the language in KRS 640.030 which requires the sentencing court to consider probation. There is not a provision in the statute regarding parole.

Merriman does, however, state that "after due consideration, the trial court may determine that the youthful offender be incarcerated in an adult institution to serve his sentence, as that is one of the three available options." No distinction was made between the adult offender and the youthful offender regarding incarceration with DOC. In fact, KRS 640.030 indicates, that once a sentencing court has chosen to sentence a youthful offender to incarceration, the offender is to be treated as an adult for the duration of his sentence. Likewise, there is nothing in the juvenile statute to indicate otherwise. The only statute which addresses restrictions upon parole eligibility is KRS 640.040(3) that states youthful offenders are not subject to limitations on probation, parole or conditional discharge as provided in KRS 533.060. However, KRS 533.060 was not implicated in *Merriman*, nor is it at issue in the present case.

While the language of *Merriman* and the reading of KRS 439.3401 in conjunction with KRS 640.030 and KRS 640.040 clearly indicate the legislature's intent for the parole provisions of the violent offender statute to apply to juveniles, the legislature has actually provided explicit language to that effect in KRS 640.075(4). The Department of Juvenile Justice (DJJ) may chose to retain a juvenile who is committed to the DOC. Once DJJ chooses to do so, there are several possibilities for the disposition of a juvenile's sentence. One of the possible dispositions is as follows:

> (4) Any youthful offender whose custody has been retained under subsection (1) of this section and who has not been released under

> other provision of law or delivered to the Department of Corrections under subsection (2) of this section, may, on one (1) occasion and after the completion of a minimum twelve (12) months additional service of sentence, petition the sentencing Circuit Court for reconsideration of probation and, except as provided in KRS 439.3401, may be considered for early parole eligibility.

KRS 640.075(4) (emphasis added).

The legislature specifically indicated that juveniles are subject to the restrictions of KRS 439.3401 which apply to parole eligibility. By including that language in the statute, the legislature evidenced their intent that parole constraints of KRS 439.3401 apply to youthful offenders. When *Merriman* is read in light of all applicable statutes, it is clear that the decision only applies to probation and not parole.

The Court of Appeals pointed out that [w]hile it is true that the last line of the court's opinion in *Merriman* states, "the Violent Offender Statute cannot be read to apply to youthful offenders[,]" the context in which that holding is made is limited to the conflict between KRS 439.3401(4) and KRS 640.030(2). (Opinion Reversing, p. 6) The Court of Appeals went on to find that "[o]nly when taken out of context can this sentence be read to prohibit the application of the violent offender statute to youthful offenders without regard to whether their incarceration is within the control of the judicial branch or the executive branch." (Opinion Reversing, p. 6) Indeed, the Unified Juvenile Justice Code specifically contemplates the application of KRS 439.3401 to juvenile offenders as it relates to any consideration for early parole. See KRS 640.075(4); see also KRS 640.080 ("The Parole Board may, with regard to a youthful offender, exercise any of the powers which it possesses pursuant to KRS Chapter 439, except as provided in KRS Chapters 600 to 645.").

Therefore the meaning of this sentence is ascertained in light of the total opinion. *Epling v. Four B & C Coal Co., Inc.*, 858 S.W.2d 216 (Ky.App. 1993). Thus, the statement that "the Violent Offender Statute cannot be read to apply to youthful offenders," applies only in the context of KRS 640.030(2) regarding probation eligibility. Even in light of *Merriman*, the Appellee is a violent offender who must serve 85% of his sentence before becoming eligible for parole.

II. KRS 640.030 DOES NOT PROHIBIT A YOUTHFUL OFFENDER FROM BEING CLASSIFIED AS A VIOLENT OFFENDER IN ACCORDANCE WITH KRS 439.3401.

Pursuant to the Unified Juvenile Code, a person under the age of eighteen who commits a felony is subject to classification as a youthful offender. KRS 640.010(c) states "[t]he child [found to be a youthful offender] shall then be proceeded against in the Circuit Court as an adult, except as otherwise provided in this chapter." (Emphasis added). "A youthful offender, who is convicted of, or pleads guilty to, a felony offense in Circuit Court, shall be subject to the same type of sentencing procedures and duration of sentence ... as an adult convicted of a felony offense." KRS 640.030 (emphasis added). The legislature could not have more clearly stated its intention that youthful offenders are to be subject to the same restrictions of KRS 439.3401 which apply to parole of adult offenders. [1]

If the youthful offender's sentence has not expired, or he has not been released on probation or parole as of his eighteenth birthday, the individual is returned to the

[1] In the unpublished opinion of *Fitts v. Commonwealth*, 2006 WL 1867904 (Ky. App. 2006), it appears that none of the parties involved questioned the fact that the youthful offender "will not be eligible for parole until after serving **85%** of his fifteen-year sentence." The opinion was written by Judge Van Meter who gained experience with the youthful offender statute as both a district and circuit court judge. (Appendix B).

sentencing court for reconsideration. KRS 640.030(2). KRS 640.030(2) gives the court three options. The court may place the youthful offender on probation or conditional discharge, may order him to enroll in a six month treatment program, or may incarcerate him in an institution operated by DOC. KRS 640.030(2)(a-c). If the circuit court determines that the youthful offender must continue in incarceration, DJJ has the discretion, after consultation with DOC, to allow him to stay in a juvenile justice facility. KRS 640.075.

If DJJ permits the youthful offender to stay in the juvenile facility, he is also allowed to petition the circuit court for reconsideration of probation after completing an additional twelve months of service. KRS 640.075(4). Thus, the statute is giving the youthful offender an additional chance to petition for consideration of probation. This reconsideration only applies to individuals who have not been released to DOC. *Id.* The statute goes on to state that, "except as provided in KRS 439.3401, [the youthful offender may also] be considered for early parole[.]" KRS 640.075(4) (emphasis supplied). Therefore, even if DJJ exercises its discretion and allows a youthful offender to stay in a juvenile facility after his eighteenth birthday, thereby giving him another opportunity to petition the court for reconsideration of probation, he is nonetheless subject to the provisions of KRS 439.3401 as those provisions relate to early parole. *Id.* However, to the extent that the Unified Juvenile Code permits reconsideration of probation by the circuit court, KRS 439.3401 does not interfere.

The Appellant does not contest that his offenses fall within the definition of violent offender. KRS 439.3401(1)(l). As such, the Appellant "shall not be released on [] parole until he has served at least eighty-five (85%) of the sentence imposed." *Id* at

(3). Therefore, DOC is without discretion to classify the Appellant as anything other than a violent offender.

There is no language in the statute which prohibits a youthful offender from being classified as a violent offender. If the legislature had intended that violent offender parole eligibility should not apply to a youthful offender, it could have easily provided definite language to that effect. It did not. The courts are not entitled to add language to existing statutes. *Knotts v. Zurich Ins. Co.*, 197 S.W.3d 512, 525 (Ky. 2006). A court shall not speculate what the General Assembly may have intended but failed to articulate; instead, it determines the General Assembly's intention "from the words employed in enacting the statute." *Commonwealth v. Gaitherwright,* 70 S.W.3d 411, 414 (Ky. 2002); *Gateway Construction Co. v. Wallbaum,* 356 S.W.2d 247, 249 (Ky. 1962). *Peterson v. Shake*, 120 S.W.3d 707 (Ky. 2003).

Appellant's assertion that for the parole restriction placed on a violent offender to apply to a youthful offender -- it must explicitly so state, is without merit. The legislature has expressly exempted youthful offenders from certain adult sentencing schemes. This Court has rejected the notion that youthful offenders can be implicitly exempt from restrictions that apply to adult offenders stating, "KRS 640.040 is a clear legislative pronouncement that youthful offenders shall not be subject to certain dispositions." *Commonwealth v. Taylor, 945* S.W.2d 420 (Ky. 1997) (holding that the prohibitions of KRS 532.045 regarding probation apply to youthful offenders since the statute is not listed in the exemptions). Therefore, absent an express exemption, such as those found in KRS 640.030 and 640.040, youthful offenders are subject to the same restrictions as are adults. This statute expressly exempts a youthful offender from certain disposition in

capital cases, persistent felony offender sentencing under the provisions of KRS 532.080 and limitations on probation, parole or conditional discharge as provided for in KRS 533.060. Conspicuously absent from this list is any reference to KRS 439.3401, the violent offender statute. To suggest that this Court rewrite the statute to include a matter not contained therein is contrary to longstanding precedent. See *Hatchett v. City of Glasgow,* Ky., 340 S.W.2d 248 (1960).

Like the Unified Juvenile Code, the Violent Offender Statute contains no exemption for youthful offenders. Here, the legislature-by the plain language of KRS 439.3401-has indicated its desire to have that statute apply to *any* person involved in a crime resulting in serious physical injury-with no exceptions. *Merriman's* citations to KRS 640.040(1) (indicating that no youthful offender under the age of 16 may be executed), KRS 640.040(2) (indicating that no youthful offender shall be subject to the provisions for sentencing persistent felony offenders), and KRS 640.040(3) (indicating that youthful offenders are not subject to the provisions of KRS 533.060 with respect to the granting of probation, parole, or conditional discharge) in support of his position that there is a traditional legislative distinction between juvenile and adult disposition and sentencing only serve to emphasize this point. If the General Assembly intended KRS 439.3401 to be inapplicable to juvenile offenders, it could have indicated such in the statute. As it did not, the courts cannot create such an exception-by implication or otherwise. *See George v. Commonwealth,* 885 S.W.2d 938, 940 (Ky.1994).

Therefore, all provisions regarding the sentencing of adults apply, other than those specifically excepted by KRS 640.030, to a youthful offender. A legislature making no exceptions to the positive terms of a statute is presumed to have intended to

make none. *Commonwealth v. Boarman,* 610 S.W.2d 922 (Ky. App. 1980). The words of a statute shall be given their literal meaning unless to do so would lead to an absurd or wholly unreasonable conclusion. *Department of Revenue v. Greyhound Corp.,* 321 S.W.2d 60 (Ky. 1959). KRS 640.040 is clear on its face. A youthful offender is to be treated the same as an adult offender, unless one of the specific exceptions contained in the statute apply. The Appellant is unable to point to any of the enumerated exceptions contained in KRS 640.030 that would exempt him from the parole eligibility requirements of KRS 439.3401. The Appellant is a violent offender and must serve eighty-five percent (85%) of his sentence before he is eligible for parole.

III. THE LEGISLATURE INTENDED FOR YOUTHFUL OFFENDERS TO BE SUBJECT TO CERTAIN PROVISION OF THE VIOLENT OFFENDER STATUTE.

The Juvenile Code was enacted with the stated goal of rehabilitating juvenile offenders, when feasible, as opposed to the primarily punitive nature of the adult penal code. *See* KRS 600.010(2)(d) ("[a]ny child brought before the court under KRS Chapters 600 to 645 shall have a right to treatment reasonably calculated to bring about an improvement of his or her condition ..."); KRS 600.010(2)(f) ("KRS Chapter 640 shall be interpreted to promote public safety and the concept that every child be held accountable for his or her conduct through the use of restitution, reparation, and sanctions, in an effort to rehabilitate delinquent youth"). For this reason, there are no distinctions made between violations, misdemeanors, or felonies for purposes of dispositions in juvenile court. *A.E. v. Commonwealth,* Ky.App., 860 S.W.2d 790, 793 (1993).

However, in Justice Noble's concurrence in *Chipman v. Commonwealth*, 313 S.W.3d 95 (Ky.2010), this Court recognized that the Juvenile Code was inappropriate for some of the more serious juvenile offenders, stating:

> At common law, through the present day, Kentucky has recognized that children should not be held to the same standard as adults. However, as modern society saw a rise in more heinous crimes being committed by children, concerns about punishment and setting an example soon followed. Consequently, the legislature enacted exceptions to the Juvenile Code by creating a class of offenders known as "youthful offenders," who are children that are prosecuted and sentenced as if they were adults. Yet, being mindful of the traditional reluctance to treat children as adults, the legislature set a high bar for children to be deemed youthful offenders.
>
> Thus, under the statutory scheme, KRS 635.010–.120 & 640.010–.120, two steps are required before a child will be sentenced as a youthful offender. First, the child must qualify for transfer to circuit court and prosecution as a youthful offender by falling under one of the youthful offender provisions in KRS 635.020(2)-(7). Then, upon conviction in the circuit court, the child may be sentenced as a youthful offender only if he is not "exempt" under KRS 640.040(4). This means that the child's ultimate conviction must continue to qualify him as a youthful offender under one of the provisions in KRS 635.020(2)-(7). *See Canter v. Commonwealth*, 843 S.W.2d 330, 331–32 (Ky.1992). As a result, to be properly sentenced as an adult, a child must qualify as a youthful offender both for prosecution and for sentencing. *Id.*

Therefore, under the statutory scheme for youthful offenders, it is the offender that is transferred to circuit court, not the offense. See *Osborne v. Commonwealth*, 43 S.W.3d 234 (Ky. 2001).

It is axiomatic that a juvenile offender has no constitutional right to be tried in juvenile court. See *Woodard v. Wainwright*, 556 F.2d 781, 785 (5 th Cir.1977), *cert. denied*, 434 U.S. 1088, 98 S.Ct. 1285, 55 L.Ed.2d 794 (1978) ("[T]reatment as a juvenile is not an inherent right but one granted by the state legislature, therefore the legislature

may restrict or qualify that right as it sees fit,[2] as long as no arbitrary or discriminatory classification is involved.") "In our Unified Juvenile Code, our Legislature has created a scheme in which most juvenile offenders are proceeded against in the juvenile division of district court." *Stout v. Commonwealth*, 44 S.W.3d 781 (Ky.App. 2000) (footnotes omitted). "However, our Legislature has recognized that not all juvenile offenders should be proceeded against in juvenile court and, accordingly, the scheme it enacted provides for both automatic and discretionary transfer of certain juvenile offenders to circuit court." *Id.* (footnote omitted).

The Appellant has had ample opportunities to show the various courts that he should not be treated as an adult and has failed. The 18-year-old hearing [provided by KRS 640.030] is simply a "second look" at the *manner* in which the youthful offender is serving his sentence and provides the trial court the opportunity to transfer the youthful offender to adult corrections. *Commonwealth v. Carneal,* 274 S.W.3d 420, 428 (Ky. 2008). In the present case, the Circuit Court has chosen to forgo any further alternative methods of fulfilling the sentence and instead transferred the Appellant to adult corrections. He is now an adult, housed with adults and subject to the sentence restrictions of an adult.

Such a conclusion is not inconsistent with Legislature's intent to treat certain juveniles as adults. For instance, any sex offender as defined by KRS 197.410(1), who is

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[2] In *Kozak v. Commonwealth*, 279 S.W.3d 129 (Ky., 2008) this court allowed for the waiver of "any of the rights set out in the Kentucky Unified Juvenile Code, unless otherwise provided. So as a general proposition, a juvenile may, by the express terms of a plea agreement, validly waive his rights under the juvenile code, including the right to be sentenced under KRS 640.040(4)."

also a youthful offender, shall be provided a sexual offender treatment program as mandated by KRS 439.340(10) by the Cabinet for Human Resources pursuant to KRS 635.500 if the youthful offender has not been transferred to DOC pursuant to KRS 640.070. Recognizing the danger society faced from a sex offender, regardless of his age, the legislature passed 2000 Ky. Acts ch. 401, § 15 (codified at KRS 17.500) to define "registrant" as any person over eighteen, or any youthful offender, who has committed a sex crime or a criminal offense against a minor (as defined in the Act), or who is a sexually violent predator. (Emphasis added).

This treatment has further been recognized for offenses committed outside the criminal code. For instance, in the unpublished case of *Christy v. Commonwealth*, 2008 WL 682601 ((Ky.App.,2008) found that" persons under eighteen years of age charged with KRS 189A offenses are to be prosecuted in the adult session of district court." (Appendix C). Therefore, *Christy's* "first DUI, while a juvenile, in district court" could be used to enhance. In *Phelps v. Commonwealth*, 125 S.W.3d 237 (Ky. 2004) this Court went even further regarding juvenile convictions stating:

> However, once a juvenile has been transferred to circuit court and ultimately is convicted in that court, those convictions can be used in any subsequent proceedings against the juvenile to charge him or her as a second offender. Thus the protections afforded juveniles are not absolute. The system is designed so that children who participate in isolated instances of reckless adolescent behavior do not have to spend the rest of their lives saddled with a criminal record. The district court is vested with the discretion to transfer certain offenders to circuit court so that they may be treated as adults. *See* KRS 635.020; KRS 640.010. It is only convictions resulting from these proceedings that can properly be used to form the basis of a subsequent felony charge.

From the preceding, it is clear that the Legislature and the Court have recognized that certain circumstances demand that juveniles be rehabilitated and punished as an adult.

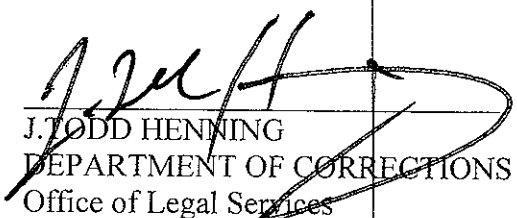
One such instance is the parole eligibility of a youthful offender who is also a violent offender. As such, the Appellant is not eligible for parole until he has served eighty-five percent (85%) of his sentence.

CONCLUSION

The phrase, "whether a youthful offender shall be placed on probation," cannot be read to exempt a youthful offender from being classified as a violent offender. The legislature created a clear and unambiguous list of exceptions in KRS 640.030 to the adult sentencing scheme for a youthful offender. Exemptions from the parole eligibility requirements of a violent offender contained in KRS 439.3401 were not included in that list. The language relied upon by the Appellant was clearly dicta. Therefore, Appellant's assertion that *Commonwealth v. Merriman*, 265 S.W.3d 196, (Ky. 2008) should be extended to prevent a youthful offender from being classified as a violent offender is without merit. "In this case, Appellant received a hearing pursuant to KRS 640.030(2). This hearing resulted in his release on probation-a second chance he would not have received but for his status as a youthful offender. However, Edwards violated his probation and it was revoked." (Opinion reversing, p.7). The Court of Appeals correctly held that "[t]he Uniform Juvenile Code affords him no more opportunities to petition the circuit court for reconsideration of probation and he is subject to the limits on early parole set forth in KRS 439.3401(4)."

WHEREFORE, based on the foregoing, Appellees respectfully request this Court to affirm the decision of Kentucky Court of Appeals.

Respectfully submitted,



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