STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BUB FISH,

Defendant-Appellant.

UNPUBLISHED
June 26, 2007

No. 269784
Saginaw Circuit Court
LC No. 04-024712-FJ

Before: Fitzgerald, P.J., and Sawyer and O'Connell, JJ.

PER CURIAM.

Pursuant to a plea agreement, defendant pleaded guilty to two counts of fourth-degree criminal sexual conduct, MCL 750.520e(1)(b), and was sentenced to probation for two years. He appeals by delayed leave granted. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with four offenses occurring in August 2000, March and July 2001, and June 2002. Defendant was 14 to 16 years old when he committed the offenses. He first argues that he was denied due process by the prearrest delay in prosecution until he had almost reached his 18th birthday, which ultimately resulted in his prosecution as an adult rather than a juvenile. However, by tendering an unconditional guilty plea, defendant waived appellate review of this issue. "When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." *Tollett v Henderson*, 411 US 258, 267; 93 S Ct 1602; 36 L Ed 2d 235 (1973); see also *People v Depifanio*, 192 Mich App 257; 480 NW2d 616 (1991) (a defendant's guilty plea waives appellate review of violation of constitutional right to speedy trial).

Defendant also argues that the 2004 amendments of the Holmes Youthful Trainee Act (HYTA), MCL 762.11 *et seq*., occurred after the offenses, so the trial court's application of the amendments violated the Ex Post Facto Clauses of the United States and Michigan Constitutions. We disagree. "A statute that affects the prosecution or disposition of criminal cases involving crimes committed before the effective date of the statute violates the Ex Post Facto Clauses if it (1) makes punishable that which was not, (2) makes an act a more serious criminal offense, (3) increases the punishment, or (4) allows the prosecution to convict on less evidence." *Riley v Parole Board*, 216 Mich App 242, 244; 548 NW2d 686 (1996).

Defendant claims that he was "disadvantaged" by the application of the HYTA amendments because the amendments excluded his class of sex offenses from eligibility after he committed them. According to defendant's argument, his ineligibility under the recent amendments means that he faces a more severe punishment and he has lost the opportunity to avoid a criminal record. "But the constitutional provision was intended to secure substantial personal rights against arbitrary and oppressive legislation, and not to limit the legislative control of remedies and modes of procedure which do not affect matters of substance." *Beazell v Ohio*, 269 US 167, 171; 46 S Ct 68; 70 L Ed 216 (1925) (citations omitted). We have long held that the HYTA is remedial in nature, *People v Trinity*, 189 Mich App 19, 21; 471 NW2d 626 (1991), so we are not bound to reverse the trial court's application of the act's amendments to defendant unless defendant can demonstrate that the amendments have more than a speculative or remote chance of increasing his penalty. *California Dep't of Corrections v Morales*, 514 US 499, 509; 115 S Ct 1597; 131 L Ed 2d 588 (1995).

In this case, defendant received two years' probation even without the assignment of youthful trainee status, and defendant fails to demonstrate that this punishment substantially exceeded the type or length of punishment he would have received if the trial court had assigned him that status. See MCL 762.13(1)(b) (authorizing three years' probation). We also reject defendant's argument that his ineligibility in the program has adversely affected his ability to expunge his record, rendering the prohibitive amendments ex post facto increases in his punishment. In *People v Link*, 225 Mich App 211, 215-216; 570 NW2d 297 (1997), we held that the expungement was a remedial privilege, not a right. Therefore, exclusionary amendments to the expungement statute could be applied retroactively to a convict, even if the amendments did not take effect until after the defendant filed his appeal for review of the expungement's denial. *Id*. at 212-213, 218. In so holding, we favorably cited *State v Burke*, 109 Ore App 7, 12; 818 P2d 511 (1991), for the proposition that retroactive application of an expungement exclusion did not violate ex post facto restrictions, because expungement is too attenuated with imprisonment and other punitive ramifications for the crime. *Link*, *supra* at 216. Defendant has not presented any basis for revisiting our previous reasoning in *Link*, and he has failed to carry his burden of demonstrating that the revisions to the statute had anything more than a speculative and remote risk of increasing his punishment. See *Trinity*, *supra*. Therefore, the trial court did not err by applying the statute as amended.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ David H. Sawyer
/s/ Peter D. O'Connell