

The Supreme Court of Ohio

CASE ANNOUNCEMENTS

April 22, 2020

[Cite as *04/22/2020 Case Announcements #2, 2020-Ohio-1488.*]

APPEALS NOT ACCEPTED FOR REVIEW

2020-0039. State v. Loveless.

Clermont App. No. CA2019-03-028, 2019-Ohio-4830.

Donnelly, J., dissents, with an opinion.

DONNELLY, J., dissenting.

{¶ 1} According to the decision of the Twelfth District Court of Appeals, a Clermont County Grand Jury indicted appellant, Paul A. Loveless, for offenses that the state alleged to have occurred between January 18 and May 2, 2006, when Loveless was 17 years old. 2019-Ohio-4830, ¶ 1, 25. The police investigation of the offenses began in May 2006, and for all practical purposes, it concluded in August 2007, just after Loveless turned 18 years old. *Id.* at ¶ 2-4, 17-18.

{¶ 2} Early in its investigation, the police knew Loveless was a suspect—he admitted his involvement during his initial interrogation by the police. *Id.* at ¶ 4, 10. In short order, the police gathered evidence—they conducted several interviews with Loveless and his parents, seized several computers found in Loveless’s home, and conducted forensic searches on the computers. *Id.* at ¶ 6-7, 9-10, 12-15. The police knew how to find Loveless—he remained in the area and made no effort to avoid them. *Id.* at ¶ 21.

{¶ 3} The case went dormant until April 2009, when a new detective was assigned to the case and the detective contacted the prosecuting attorney’s office. *Id.* at ¶ 18. After discussing the previously collected evidence with the detective, the prosecuting attorney indicated that

Loveless's case would be presented to the grand jury for indictment after Loveless turned 21 years old in three months' time. *Id.* at ¶ 20.

{¶ 4} Under R.C. 2151.23(I), if a child who “allegedly commits an act that would be a felony if committed by an adult * * * is not taken into custody or apprehended” until after he turns 21 years old, the juvenile court has no jurisdiction and the juvenile can be prosecuted as an adult. “Apprehended” is not defined in the Revised Code, and the caselaw involving what amounts to “apprehended” is “sparse.” *In re H.C.*, 8th Dist. Cuyahoga No. 102601, 2015-Ohio-3676, ¶ 10.

{¶ 5} On August 9, 2009, about a week after Loveless turned 21 years old and became subject to the jurisdiction of the adult court under the state's and the Twelfth District's interpretation of R.C. 2151.23(I), the grand jury returned a 26-count indictment against him. 2019-Ohio-4830 at ¶ 25. The indictment charged Loveless with multiple counts of pandering sexually oriented material involving a minor, multiple counts of unauthorized use of a computer, and one count of tampering with evidence. *Id.* Loveless subsequently pled guilty to one count of tampering with evidence, one count of pandering obscenity, and five counts of unauthorized use of a computer. *Id.* at ¶ 26. Loveless filed in the trial court a motion to vacate his convictions based on the court's lack of subject-matter jurisdiction to convict and sentence him for offenses that occurred before he turned 18 years old, which the court denied. *Id.* at ¶ 27. The Twelfth District overruled his challenge to the trial court's judgment. *Id.* at ¶ 43, 45.

{¶ 6} Because the offenses had clearly been committed by Loveless when he was a juvenile and almost fully investigated by the time he turned 18 years old, I question why the state ignored the juvenile court's jurisdiction just so it could charge Loveless in adult court once he turned 21 years old. In this instance, it may very well be said that justice delayed is truly justice denied.

{¶ 7} Regardless of whether Loveless's case fell through the cracks or whether a more nefarious reason exists for the state's delay in bringing charges against him, the Twelfth District's decision, coupled with the state's actions, present troubling precedent that is ripe for abuse. As it stands now, the state can use a loophole in the Revised Code to bypass the jurisdiction of the juvenile court and charge a delinquent child in an adult court simply by waiting until the person turns 21 years old.

{¶ 8} Because there is a lack of caselaw and guidance on the meaning of the word “apprehended” in R.C. 2151.23(I), I believe we should accept jurisdiction in this case and

determine whether Loveless's motion to vacate his convictions based on the trial court's purported lack of jurisdiction is meritorious. I dissent.
