



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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March 3, 2015

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Eugene Murphy, Esq.
Senior Assistant Attorney General
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900 East Main Street
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Re: Adam Robert Blackington v. Commonwealth of Virginia;
Case No. CL-2013-18691

Dear Counsel:

This matter is before the Court on the Petition for a Writ of Habeas Corpus filed by Petitioner Adam Robert Blackington and the Commonwealth's Motion to Dismiss. For the reasons stated below, the Commonwealth's Motion to Dismiss will be granted.

Background

On October 17, 2011, the petitioner Adam Robert Blackington ("Mr. Blackington") pleaded guilty to one count of using a computer to solicit a minor to commit sodomy in violation of Va. Code Ann. § 18.2-374.3(E).

OPINION LETTER

The facts of the case as proffered by the Commonwealth were that in 2010, when Mr. Blackington was 20 years old, he used the Internet to solicit oral sex from a 16 year old. On December 16, 2011, Mr. Blackington was sentenced to 12 months of incarceration, all suspended, with two years of active probation. As a special condition of probation, Mr. Blackington was ordered to submit to a substance abuse evaluation and a mental health evaluation and to follow whatever requirements his probation officer might impose for substance abuse treatment or mental health counseling. He was ordered to have no contact with the victim.

On December 16, 2013, Mr. Blackington filed his Petition for a Writ of Habeas Corpus. In the petition, he alleges that his conviction is void *ab initio* because Virginia's sodomy statute, Code § 18.2-361(A)¹, is facially unconstitutional under Lawrence v. Texas, 539 U.S. 558 (2003) and the Due Process Clause of the Fourteenth Amendment. In support of his argument, Mr. Blackington relies on MacDonald v. Moose, 701 F.3d 154, (4th Cir. 2013). In that case, the Fourth Circuit ruled that Code § 18.2-361(A) is facially unconstitutional.

This court took the matter under advisement. In the meantime, the Supreme Court of Virginia granted an appeal in three cases in which it was asked to decide the constitutionality of Code § 18.2-361(A) in light of Lawrence v. Texas, *supra*, and MacDonald v. Moose, *supra*. This court has deferred ruling on this case until the Supreme Court of Virginia ruled on the issue of the constitutionality of Code § 18.2-361(A).

Rejecting the Fourth Circuit's reasoning in MacDonald v. Moose, the Virginia Supreme Court held in Toghill v. Commonwealth, ___ Va. ___, ___ S.E.2d ___ (Record No. 140414, February 26, 2015), that Code § 18.2-361(A) is not facially unconstitutional or unconstitutional as applied to an adult charged with using the Internet to solicit of a minor to engage in sodomy.² See also McDonald v. Commonwealth, 274 Va. 249 (2007).

¹ In 2014, the General Assembly amended Code § 18.2-361(A) to remove the general provisions forbidding sodomy. Any references to Code § 18.2-361(A) in this letter refer to the statute as it existed in 2010, the time of Mr. Blackington's offense.

² The other two cases in which an appeal was granted were disposed of by unpublished orders. See Saunders v. Commonwealth, (Record No. 140507, Order dated February 26, 2015), McClary v. Commonwealth, (Record No. 140785, Order dated February 26, 2015). Both Saunders and McClary followed the holding of Toghill.

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The Supreme Court of Virginia's holding in Toghill is dispositive in this case. As noted in Toghill, Lawrence v. Texas "simply does not afford adults with the constitutional right to engage in sodomy with minors." Slip Opinion at p. 11.

Applying the holding of Toghill, this court concludes that Code § 18.2-361(A) is not unconstitutional as applied to Mr. Blackington. His conviction for violating § 18.2-374.3(E) by using the Internet to solicit a minor to commit oral sodomy in violation of Code § 18.2-361(A) is not void *ab initio*.

Conclusion

For the reasons stated above, this court will grant the Commonwealth's Motion to Dismiss Mr. Blackington's Petition for Habeas Corpus Relief. An order reflecting this ruling has been entered (copy attached).

Sincerely,

A solid black rectangular box redacting the signature of Jane Marum Roush.

Jane Marum Roush

OPINION LETTER

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

Adam Robert Blackington,)
)
 Plaintiff,)
)
v.) Case No.: CL-2013-18691
)
Commonwealth of Virginia,)
)
 Respondent.)

FINAL ORDER

THIS MATTER is before the court on the plaintiff's Petition for Writ of Habeas Corpus and the Respondent's Motion to Dismiss.

For the reasons stated in this court's opinion letter dated March 3, 2015, which is incorporated herein by reference, the Respondent's Motion to Dismiss is hereby GRANTED.

This matter is final.

ENTERED this 3rd day of March, 2015.



Jane Marum Roush
Judge