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Opinion No. 07-81

Constitutionality of Proposed Amendment to Tenn. Code Ann. § 37-1-159

QUESTION

Whether House Bill 1498, which would amend Tenn. Code Ann. § 37-1-159, the statute dealing with juvenile appeals, to provide that juveniles would not be entitled to an appeal where there is a negotiated plea agreement and the juvenile is represented by counsel, is constitutional.

OPINION

Yes. The proposed amendment to Tenn. Code Ann. § 37-1-159 is constitutional.

ANALYSIS

Current law provides an appeal as of right from final orders or judgments in delinquency, unruly child, and dependent or neglect proceedings in juvenile court. *See* Tenn. Code Ann. § 37-1-159(a). The proposed legislation in question, as amended by the Senate, removes a juvenile's right to appeal in delinquent and unruly cases if: (1) the case was adjudicated based on the juvenile court's acceptance of a negotiated plea deal; and (2) the juvenile was represented by counsel.

You question whether the proposed legislation might be discriminatory. However, there does not appear to be an equal protection violation. Both the United States and Tennessee Constitutions guarantee citizens the equal protection of the laws. *Brown v. Campbell County Bd. of Educ*., 915 S.W.2d 407, 412 (Tenn. 1995); *State v. Tester*, 879 S.W.2d 823, 828 (Tenn. 1994). Equal protection requires that all persons be treated the same under like circumstances and conditions. *Brown v. State*, 928 S.W.2d 453, 456 (Tenn. Crim. App. 1996). "Equal protection does not require that all persons be dealt with identically, but it does require that a distinction made have some relevance to the purpose for which the classification is made." *Baxstrom v. Herold*, 383 U.S. 107, 113 (1966).

In the absence of a suspect classification or an intrusion upon a fundamental constitutional right, review is limited to whether the classification is rationally related to a legitimate governmental interest. *State v. Tester*, 879 S.W.2d 823, 828 (Tenn. 1994)*; State v. Ray*, 880 S.W.2d 700, 706 (Tenn. Crim. App. 1993). A right is fundamental only when it is protected, either

implicitly or explicitly, by a constitutional provision. *State v. Tester*, 879 S.W.2d 823, 828 (Tenn. 1994). The Tennessee Supreme Court has held that there is no constitutional right to an appeal. *Serrano v. State*, 133 S.W.3d 599 (Tenn. 2004). Thus, the right to appeal is not fundamental. Furthermore, juveniles are not a suspect class. *See Gregory v. Ashcroft*, 501 U.S. 452, 470 (1991); *State v. Crain*, 972 S.W.2d 13, 15 (Tenn. Crim. App. 1998); *State v. Tiffany Michelle Taylor*, No. M1999-02358-CCA-R3-CD, 2002 WL 799695 (Tenn. Crim. App. Apr. 29, 2002); *State v. Freddie Morrow and Damien Darden*, No. 01C01-9612-CC-00512, 1998 WL 917802, *7 (Tenn. Crim. App. Dec 22, 1998).[1]

It is the opinion of this office that the pending legislation does not violate equal protection. First, it applies equally to all juveniles in the state. *See State v. Tiffany Michelle Taylor*, No. M1999-02358-CCA-R3-CD, 2002 WL 799695, at *10 (Tenn. Crim. App. Apr. 29, 2002) (holding that the juvenile transfer statute "does not violate equal protection because the statute applies equally to all juveniles in the state"). In addition, any difference in the treatment of juveniles who enter into a negotiated plea agreement and those who do not is not arbitrary or capricious. *See State v. Freddie Morrow and Damien Darden*, No. 01C01-9612-CC-00512, 1998 WL 917802 (Tenn. Crim. App. Dec 22, 1998) (holding that there was no equal protection violation because the distinction between juveniles transferred by lawyer judges and non-lawyer judges was not arbitrary or capricious). Moreover, the statutory right to appeal is similarly limited in both criminal and juvenile appeals when there is a negotiated agreement. *See* Tenn. R. Crim. P. 37(b).

Furthermore, juveniles are not left without a remedy. The Juvenile Post-Commitment Procedures Act provides:

> A juvenile in the custody of the department of children's services pursuant to a commitment by a juvenile court of this state may petition for post-commitment relief under this part at any time after the juvenile has exhausted the juvenile's appellate remedies or time for an appeal to the circuit court pursuant to § 37-1-159, or the juvenile's appeal in the nature of a writ of error from the judgment of the circuit court has passed and before the juvenile has been discharged from the custody of the department.

Tenn. Code Ann. § 37-1-302. The statute further provides:

> Relief under this part shall be granted when petitioner's commitment is void or voidable because of the abridgement in any way of any right guaranteed by the

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[1]Other jurisdictions have also held that juveniles are not a suspect class. *See Gean v. Hattaway*, 330 F.3d 758, 771 (6th Cir. 2003); *Ramos v. Town of Vernon*, 353 F.3d 171, 181 (2d Cir. 2003); *Doe v. Weld*, 954 F.Supp. 425, 436 (D. Mass. 1996); *People in Interest of D. G.*, 733 P.2d 1199 (Colo.1987); *B.S. v. State*, 862 So.2d 15, 18 (Fla. App. 2003); *People v. M.A.*, 529 N.E.2d 492, 494 (Ill. 1988); *Caldwell v. Com.*, 133 S.W.3d 445, 453 (Ky. 2004); *Charles C. v. Com.*, 612 N.E.2d 229, 235 (Mass. 1993); *In Re Chappell*, 843 N.E.2d 823, 830 (Ohio App. 2005); *In re M.A.H.*, 20 S.W.3d 860, 866 (Tex. App.-Fort Worth 2000); *Ballard v. Com.*, 321 S.E.2d 284, 286-87 (Va. 1984); *In re C.H.*, 683 P.2d 931, 938 (Mont. 1984); *State v. Schaaf*, 743 P.2d 240 (Wash. 1987); *In re Jeremy P.*, 692 N.W.2d 311, 321 (Wis. App. 2004); *Hansen v. State*, 904 P.2d 811, 820 (Wyo. 1995).

> laws or constitution of this state, or the Constitution of the United States, including a right that was not recognized as existing at the time of the trial if either constitution requires retrospective application of that right.

Tenn. Code Ann. § 37-1-305.

Based on the foregoing, there do not appear to be any grounds to suggest that the proposed legislation would disadvantage a suspect class or infringe upon a fundamental right. Moreover, the classification drawn by the proposal is neither arbitrary nor capricious. Thus, it is the opinion of this Office that House Bill 1498, as amended by the Senate, is constitutional.

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