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Opinion No. 08-168

Aggravated Child Abuse and Neglect

QUESTIONS

1. Is a conviction for aggravated child neglect prosecuted under Tenn. Code Ann. § 39-15-402 to be served at 100% pursuant to Tenn. Code Ann. § 40-35-501(i)(1) despite the fact that this statute specifically names only aggravated child abuse as a 100% offense?

2. If so, is a sentence for aggravated child neglect, ordered to be served as a Range I standard offender, an illegal court judgment?

OPINIONS

1. No. A sentence for aggravated child neglect is not required to be served at 100%.

2. No. A Range I standard offender sentence for aggravated child neglect is not an illegal court judgment**.**

ANALYSIS

1. Aggravated child neglect and aggravated child abuse are defined in Tenn. Code Ann. §§ 39-15-401 and 402. In 2005, these statutes were amended to create two distinct offenses. Under the previous version, aggravated child abuse and neglect was a single offense committed in one of two ways: through injury or neglect. *See State v. Mateyko*, 53 S.W.3d 666, 668 n1 (Tenn. 2001).

The statutes as amended, and read *in pari materia*, create two offenses with distinct elements. Tennessee Code Annotated § 39-15-402 makes a distinction between abuse and neglect or endangerment by referring to specific subsections of § 39-15-401, which define abuse (a) and neglect or endangerment (b).

> A person commits the offense of aggravated child abuse or aggravated child neglect or endangerment, who commits the offense of *child abuse, as defined in § 39-15-*

> *401(a),* or who commits the offense of *child neglect or endangerment, as defined in § 39-15-401(b),* and:
>
> (1) the act of abuse or neglect results in serious bodily injury to the child;
>
> (2) the act of neglect or endangerment results in serious bodily injury to the child;
>
> (3) A deadly weapon, dangerous instrumentality or controlled substance is used to accomplish the act of abuse, neglect or endangerment; or
>
> (4) the act of abuse, neglect or endangerment was especially heinous atrocious or cruel, or involved the infliction of torture to the victim.

Tenn. Code Ann. § 39-15-402(a) (2006) (emphasis added).

In addition, the elements to prove abuse or neglect are different from each other. "Abuse" occurs when a person "knowingly, other than by accidental means, treats a child . . . in such a manner as to inflict injury [.]" Tenn. Code Ann. § 39-15-401(a). "Neglect or endangerment" occurs when a person "knowingly abuses or neglects a child . . . so as to adversely affect the child's health and welfare[.]" Tenn. Code Ann. § 39-15-401(b). To prove abuse, there must be evidence of injury. Thus, aggravated child neglect and aggravated child abuse are distinct offenses.

The General Assembly is presumed to know the existing law in this State at the time legislation is enacted. *See Wilson v. Johnson Co.,* 879 S.W.2d 807 (Tenn. 1994). Therefore, when the General Assembly amended section 402 to create two distinct offenses of aggravated child neglect and aggravated child abuse, it is presumed to have known that only aggravated child abuse is listed as one of fifteen (15) particularly violent or serious crimes for which parole is unavailable in Tennessee. *See* Tenn. Code Ann. § 40-35-501(i)(2)(K). Because aggravated child neglect is not included in that list, it is not subject to the release eligibility provisions of section 501(i)(2)

2. As explained in the analysis for the first question, only aggravated child abuse is subject to the 100% release eligibility provision. *See* Tenn. Code Ann. § 40-35-501(i)(2)(K). Thus, a person sentenced for aggravated child neglect or endangerment may be legally sentenced to a Range I, standard offender, sentence.

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