

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID M. TOMASSI,

Defendant-Appellant.

UNPUBLISHED

August 23, 1996

No. 183823

LC No. 94136286 FH

Before: Markman, P.J., and Marilyn Kelly and L.V. Bucci,* JJ.

PER CURIAM.

Defendant pleaded guilty to two counts of parental kidnapping. MCL 750.350a; MSA 28.582(1). The trial judge sentenced him to imprisonment of one year and to five years' probation. Defendant appeals as of right, arguing that his convictions constituted a violation of the Ex Post Facto Clause of the federal and Michigan constitutions. US Const, art 1, § 9, cl 3; Const 1963, art 1, § 10. We affirm.

There are two elements to the test for determining whether a criminal law violates the Ex Post Facto Clause: (1) whether the law is retrospective, i.e., whether it applies to events occurring before its enactment, and (2) whether it disadvantages the offender. *People v Slocum*, 213 Mich App 239, 243; 539 NW2d 572 (1995).

Defendant took his children from their mother, the custodial parent, and hid them in another state. At the time, the parental kidnapping statute provided, in part:

(1) An adoptive or natural parent of a child shall not take that child, or retain that child for more than 24 hours, with the intent to detain or conceal the child from any other parent or legal guardian of the child who has custody or visitation rights pursuant to a lawful order at the time of the taking or retention, or from the person or persons who have adopted the child, or from any other person having lawful charge of the child at the time of the taking or retention.

* Circuit judge, sitting on the Court of Appeals by assignment.

(2) Except as provided in subsection (3), a person who violates subsection (1) is guilty of a misdemeanor, punishable by imprisonment for not more than 45 days, or a fine of not more than \$500, or both.

(3) A person who violates subsection (1) by taking the child from this state, or retaining the child outside this state for more than 24 hours, is guilty of a felony, punishable by imprisonment for not more than 1 year, or a fine of not more than \$2,000.00 or both. [1983 PA 138.]

The statute took effect on December 1, 1983. Defendant took the children from their mother's custody on December 23, 1983. The information does not specifically state that defendant was charged under the 1983 version of the statute. It did indicate that he was charged with a felony which carried one year's imprisonment or a \$2,000 fine. That penalty corresponds to the 1983 version. Therefore, the Ex Post Facto Clause was not violated, as the statute did not inflict a punishment greater than that which was attached to the crime when committed. *People v Chesebro*, 185 Mich App 412, 420-421; 463 NW2d 134 (1990).

Even if the statute had taken effect after defendant removed the children from their mother's custody, application of it to defendant would not constitute punishment for a past offense. Rather, the conviction would have been for continuing to retain the children for more than twenty-four hours after the effective date of the statute. Therefore, the law is not an ex post facto law. *Samuels v McCurdy*, 267 US 188, 193; 45 S Ct 264; 69 L Ed 568 (1925); *Chicago & A R Co v Tranbarger*, 238 US 67; 35 S Ct 678; 59 L Ed 1204 (1915).

Affirmed.

/s/ Stephen J. Markman
/s/ Marilyn Kelly
/s/ Lido V. Bucci