STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID CHRIS MILLISOR,

Defendant-Appellant.

UNPUBLISHED
March 27, 2001

No. 227722
Eaton Circuit Court
LC No. 99-020168-FH

Before: Talbot, P.J., and Sawyer and F. L. Borchard*, JJ.

PER CURIAM.

Defendant appeals by leave granted his plea-based conviction of attempted maintaining a gambling house, MCL 750.302; MSA 28.534; MCL 750.92; MSA 28.287. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant and his brother, Daniel Lee Millisor, manage the Windmill Truck Stop. On July 21, 1998, the Michigan State Police searched the truck stop pursuant to a warrant and discovered video slot machines, video poker machines, and a video blackjack machine on the premises. Successful players earned points which could be redeemed for merchandise within the establishment.

Defendant and Daniel Lee Millisor were charged in separate informations with one count of conducting a gambling operation without a license, MCL 432.218(1); MSA 18.969(218)(1), and one count of conspiracy to violate state gambling laws, MCL 750.157a(b); MSA 28.354(1)(b). In the trial court, defendant moved to quash the information on the ground that the games in the truck stop constituted redemption games, which are exempted by MCL 750.310b; MSA 28.542(2) from the state's general prohibition on gambling. In the alternative, defendant argued that MCL 750.310b; MSA 28.542(2) is unconstitutionally vague in that it does not give fair notice of what conduct is proscribed, and that it encourages arbitrary and discriminatory enforcement. The trial court denied defendant's motion to quash, finding that the games seized from the truck stop did not meet the definition of a redemption game in MCL 750.310b(2); MSA 28.542(2)(2), and that MCL 750.310b; MSA 28.542(2) is not unconstitutionally vague.

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

Defendant entered a conditional plea of guilty of the misdemeanor offense of attempted maintaining a gambling house.[1] He reserved the right to appeal the trial court's ruling concerning the applicability and constitutionality of MCL 750.310b; MSA 28.542(2).

Issues of statutory interpretation and constitutionality are reviewed de novo on appeal. *People v Webb*, 458 Mich 265, 274; 580 NW2d 884 (1998); *People v Jensen (On Remand)*, 231 Mich App 439, 444; 586 NW2d 748 (1998).

MCL 750.310b; MSA 28.542(2) provides:

> (1) This chapter[2] does not apply to a redemption game if all of the following conditions are met:
>
> (a) The outcome of the game is determined through the application of an element of skill by the player.
>
> (b) The award of the prize is based upon the player's achieving the object of the game or otherwise upon the player's score.
>
> (c) Only noncash prizes, toys, novelties, or coupons or other representations of value redeemable for noncash prizes, toys, or novelties are awarded.
>
> (d) The wholesale value of a prize, toy, or novelty awarded for the successful single play of a game is not more than $3.75.
>
> (e) The redemption value of coupons or other representations of value awarded for the successful single play of a game does not exceed 15 times the amount charged for a single play of the game or $3.75, whichever is less. However, players may accumulate coupons or other representations of value for redemption for noncash prizes, toys, or novelties of a greater value up to, but not exceeding, $250.00 wholesale value.
>
> (2) As used in this section, 'redemption game' means a single player or multi-player mechanical, electronic, or manual amusement device involving a game, the object of which is throwing, rolling, bowling, shooting, placing, propelling, or stopping a ball or other object into, upon, or against a hole or other target. Redemption game does not include either of the following:

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[1] Daniel Lee Millisor entered a conditional plea of guilty of attempted maintaining a gambling operation without a license, MCL 432.218(1); MSA 18.969(218)(1); MCL 750.92; MSA 28.287. His application for leave to appeal the trial court's ruling on the applicability and constitutionality of MCL 750.310b; MSA 28.542(2) was granted as well, and that case, *People v Daniel Lee Millisor*, Docket No. 227723, is being submitted together with the instant case.

[2] "This chapter" refers to MCL 750.301-315; MSA 28.533-547, which is part of the statutory scheme governing gambling.

(a) Games such as roulette, beano, cards, dice, wheels of fortune, video poker, slot machines, or other games in which winning depends primarily upon fortuitous or accidental circumstances beyond the control of the player.

(b) A game that includes a mechanical or physical device which directly or indirectly impairs or thwarts the skill of the player.

Initially, defendant argues that MCL 750.310b; MSA 28.542(2) is unconstitutionally vague because it does not provide a reasonable person fair notice of what types of games are exempted from the general prohibition on gambling, and because it permits arbitrary and discriminatory enforcement. As support for this assertion, defendant emphasizes that the initial investigative officer examined the games and concluded that they fell within the definition of redemption games because they involved an element of skill. Defendant contends that the different opinions held by law enforcement officers and the prosecuting attorney regarding the legality of the games demonstrates that the statute is unconstitutionally vague. We reject defendant's argument and affirm his conviction.

In order to be constitutional, a penal statute must define the criminal offense "with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." *Kolender v Lawson*, 461 US 352, 357; 103 S Ct 1855; 75 L Ed 2d 903 (1983). MCL 750.310b; MSA 28.542(2) exempts games which award noncash prizes for successful results determined by the application of an element of skill by the player. The games seized from the truck stop awarded noncash prizes and, arguably, involved elements of skill such as selecting certain cards and stopping wheels at particular points. However, the games fail to meet the definition of "redemption games" in MCL 750.310b(2); MSA 28.542(2)(2). Video poker and video slot machine games do not involve propelling or stopping a ball or other object. A video blackjack machine simply displays a card game on a video screen. More importantly, video poker, video slot machine games, and card games are expressly excluded from the definition of a redemption game. MCL 750.310b(2)(a); MSA 28.542(2)(2)(a). The statute gives a reasonable person fair notice that games such as those seized from the truck stop do not constitute redemption games and thus are not exempted from the general prohibition on gambling. Moreover, because the types of games at issue here are clearly excluded from protection, the statute does not encourage arbitrary and discriminatory enforcement. *Kolender*, *supra*. Defendant has not overcome the presumption that MCL 750.310b; MSA 28.542(2) is constitutional. *People v White*, 212 Mich App 298, 309; 536 NW2d 876 (1995). His vagueness argument must fail.

When interpreting a statute, our primary goal is to give effect to the intent of the Legislature. To discern that intent, we look first to the specific language of the statute. If the language of the statute is clear and unambiguous, judicial construction is inappropriate. If reasonable minds could differ as to the meaning of the statutory language, judicial construction is appropriate. We look to the purpose of the statute and the harm it was designed to remedy, and apply a reasonable construction that accomplishes that purpose. *People v Stone Transport, Inc*, 241 Mich App 49, 50-51; 613 NW2d 737 (2000).

Defendant's second argument on appeal is that the games seized from the truck stop fall within the definition of redemption games. He emphasizes that MCL 750.310b(2)(a); MSA

28.542(2)(2)(a) provides that a redemption game does not include "*other* games in which winning depends primarily on fortuitous or accidental circumstances beyond the control of the player" (emphasis added). Defendant contends that this phrase either modifies or presents an equivalent to the immediately preceding list of games, which includes those types of games seized from the truck stop, and indicates that the only types of games which are not deemed to be redemption games are those which depend almost entirely on chance. We reject defendant's argument and affirm his conviction. This argument, if accepted, would bring virtually all types of games within the definition of redemption games, and thus would render nugatory that portion of MCL 750.310b(2)(a); MSA 28.542(2)(2)(a) which lists specific examples of games that cannot be redemption games. Construction of a statute which renders a portion thereof nugatory should be avoided, *People v Borchard-Ruhland*, 460 Mich 278, 285; 597 NW2d 1 (1999), as should any construction which leads to an absurd result. *People v Wujkowski*, 230 Mich App 181, 185; 583 NW2d 257 (1998). MCL 750.310b; MSA 28.542(2) does not exempt those types of games seized from defendant's establishment from the general prohibition on gambling.

Affirmed.

/s/ Michael J. Talbot
/s/ David H. Sawyer
/s/ Fred L. Borchard