ENTRY ORDER

SUPREME COURT DOCKET NO. 2004-085

MARCH TERM, 2005

In re Allen Rheaume	}	APPEALED FROM:
	}	
	}	
	}	Orleans Superior Court
	}	
	}	DOCKET NO. 226-9-03 Oscv
		Trial Judge: Dennis R. Pearson

In the above-entitled cause, the Clerk will enter:

¶ 1 Petitioner, Allen Rheaume, was convicted of driving under the influence (DUI), fourth offense. In his motion for post-conviction relief, the court granted summary judgment in favor of the State. Petitioner argues that we should reverse State v. LeBlanc, 171 Vt. 88, 759 A.2d 991 (2000), and hold that his fourth offense should be treated as his second offense. We affirm.

¶ 2 The State charged petitioner with DUI, fourth offense on December 21, 2001. He had previously been convicted of DUI on February 22, 1982, November 16, 1986, and December 20, 2001. The State sought to have petitioner pay a penalty of "not more than $2,500 or [be] imprisoned not more than five years or both," pursuant to the penalty provision for third or subsequent offenses, 23 V.S.A. § 1210(d).

¶ 3 While the charges were pending, petitioner moved to dismiss the allegation that he was a fourth offender, arguing that the State could charge him only with a DUI second offense under § 1210(d). Petitioner noted that the pre-1991 version of § 1210(d) forgave previous DUI convictions that occurred more than fifteen years before the current conviction and consequently the State charged his December 20, 2001, DUI offense as a first offense. Petitioner explained that when the Legislature amended § 1210(d) in 1991 it deleted the fifteen-year forgiveness period, but added a savings clause that retained the forgiveness period for third convictions in cases where the prior convictions occurred before July 1, 1991. Petitioner argued based on the savings clause that the fifteen year forgiveness period was a right that had previously vested, and having once been invoked to forgive his first two DUIs when he was charged with a third DUI, the forgiveness period must still apply so that his fourth offense is treated as a second offense.

¶ 4 The district court denied petitioner's motion to dismiss, and he pled guilty to and was convicted of DUI, fourth offense. Petitioner filed a petition for post-conviction relief raising the same arguments that he raised in his motion to dismiss. The State moved for summary judgment arguing that no material facts were in dispute and that the holding in State v. LeBlanc settled the legal issue. The State relied on our statement in LeBlanc that under the amended statute "there is no longer any forgiveness period for third or subsequent DUI convictions," and if a defendant is convicted for a fourth offense after 1995, "defendant has no right to have any of his prior convictions forgiven." LeBlanc, 171 Vt. at 93–94, 759 A.2d at 994.

¶ 5 The superior court agreed, holding that no dispute of facts existed and that LeBlanc was controlling. Therefore, the court granted the State's summary judgment motion.

¶ 6 In LeBlanc, we reviewed the pre-1991 version of 23 V.S.A. § 1210(d), and the 1991 amendment to determine "whether the savings clause that accompanied the 1991 amendment to 23

V.S.A. § 1210(d) is available to a defendant who had already been convicted of . . . (DUI) three times at the time of the amendment." 171 Vt. at 89, 758 A.2d at 991. We held that:

> after the 1991 amendment, defendants who had two DUI convictions before 1991 may seek to avail themselves of the fifteen-year forgiveness period to determine the penalty when convicted of a third offense. With that limited exception, there is no longer any forgiveness period for third or subsequent DUI convictions.

Id. at 93, 759 A.2d at 994.

¶ 7 In the present case, petitioner argues that LeBlanc was wrongly decided and should be overturned. Specifically, petitioner contends that we incorrectly: (1) interpreted the savings clause; (2) interpreted the word "accrued"; (3) assessed the parameters of the pre-existing right in considering the application of 1 V.S.A. § 214; and (4) read the forgiveness clause in conjunction with the other forgiveness clauses in 23 V.S.A. § 1208.

¶ 8 We see no reason to overturn our unanimous decision in LeBlanc. "[W]e have noted that although we are not 'slavish adherents' to [the doctrine of stare decisis], neither do we lightly overturn recent precedent, especially where the precedent could be changed easily by legislation at any time." O'Connor v. City of Rutland, 172 Vt. 570, 570, 772 A.2d 551, 552 (2001) (mem.) (quotations omitted). More than four years have passed since our decision in LeBlanc, and the Legislature has not changed § 1210(d). Furthermore, there have been no other developments in the law affecting the issue. Thus, LeBlanc controls in this case.

¶ 9 Applying LeBlanc to the present case, we conclude that petitioner had no statutory right to have his fourth offense treated as his second offense. When petitioner committed his third DUI offense on December 20, 2001, he availed himself of the fifteen-year forgiveness period to determine the penalty. Thus, his two previous DUI convictions were not used to enhance the penalty, and his third offense was treated as his first offense. In contrast, when petitioner committed his fourth DUI on December 21, 2001, he no longer had any statutory right to invoke the savings provision included in the 1991 amendment to § 1210(d), as explained in LeBlanc. Therefore, the trial court correctly concluded that the State properly charged and convicted petitioner with DUI, fourth offense.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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John A. Dooley, Associate Justice

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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Frederic W. Allen, Chief Justice (Ret.),
Specially Assigned