

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-001265-MR

LARRY DALE WATTS

APPELLANT

v. APPEAL FROM CASEY CIRCUIT COURT
HONORABLE JAMES G. WEDDLE, JUDGE
INDICTMENT NO. 92-CR-00078

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: EMBERTON, CHIEF JUDGE; KNOPF AND SCHRODER, JUDGES.

KNOPF, JUDGE: Larry Dale Watts appeals from an order of the Casey Circuit Court classifying him as a high risk sex offender pursuant to KRS 17.570. On June 21, 2000, this Court ordered that Watts's appeal be abated pending a decision by the Kentucky Supreme Court on its grant of discretionary review in three cases, all three of which concerned the constitutionality of the Sexual Offender Registration Act, commonly known as "Megan's Law."¹ Hyatt v. Commonwealth,² which consolidated all three

¹ KRS 17.500 et seq.

cases and upheld the constitutionality of the Act, is now final. Thus, this case is ripe for our review. Based upon the Supreme Court's holding in Hyatt, and concluding that Watts has failed to preserve other issues for review, we affirm.

In January of 1994, Watts pleaded guilty to two counts of sexual abuse in the first degree³ and one count of sodomy in the second degree.⁴ The trial court sentenced him to a total of five years' imprisonment. In March of 1999, prior to his anticipated release from prison, the trial court ordered Watts to undergo a sex-offender risk-assessment, and the court scheduled a hearing to determine his classification type for registration and community notification under the Sex Offender Registration Act.

At the hearing on March 31, 1999, Watts's counsel objected to the imposition of registration upon him, arguing that the Act may not be constitutionally applied to persons who were convicted of an offense which occurred prior to the statute's effective date. He also moved for a continuance to notify the Attorney General of his constitutional challenge to the statute. The trial court denied his motion for a

² Ky., 72 S.W.3d 566 (2002).

³ KRS 510.110.

⁴ KRS 510.080.

continuance and further found that the Act could be constitutionally applied to Watts. Following the hearing, the trial court classified Watts as a high risk sex-offender. This appeal followed.

The Kentucky Supreme Court has declared that the sex offender and notification statutes do not violate any constitutional protection against double jeopardy or *ex post facto* laws.⁵ The registration and notification required by this statute does not amount to punishment. Rather, this statutory system is a remedial measure designed to protect and inform the public and not to punish the offender. Thus, the registration requirement in question has a regulatory purpose only because the dissemination of information has never been considered a form of punishment.⁶

Watts argues that the Supreme Court in Hyatt "failed to address the long-term effects of the registration requirement." Because the Act restricts where he may move and live,⁷ he contends that the registration imposes a disadvantage upon him which cannot be constitutionally applied to an offense which was committed before the statute's effective date.

⁵ Hyatt, 72 S.W.3d at 571-73; Martinez v. Commonwealth, Ky., 72 S.W.3d 581 (2002).

⁶ Hyatt, 72 S.W.3d at 580.

⁷ See KRS 17.495, prohibiting a registrant from residing within 1000 feet of a school or day-care facility.

However, the Supreme Court in Hyatt specifically held that the designation of sexual predator is not a sentence or a punishment but simply a status resulting from a conviction of a sex crime.⁸ Although registration might impose a burden on a convicted sex offender, registration is merely a remedial aspect of the sentence. Consequently the Court concluded that registration requirements did not constitute a disability or restraint implicating the *ex post facto* clauses of the Federal and Kentucky Constitutions.⁹ Thus, the reasoning of Hyatt disposes of Watts's constitutional challenge.

Watts also argues that the trial court erred in denying his motion for a continuance. He asserts that he was entitled to additional time to produce exculpatory evidence. Although the Court in Hyatt held that the registration scheme was not penal in nature, it nevertheless held that it was imperative that counsel have time to adequately prepare for the hearing, that the author of the risk assessment report be in attendance at the hearing, and that the sex offender be afforded the opportunity to present expert testimony to rebut the opinions expressed by the author of the risk assessment report.¹⁰

⁸ Hyatt, 72 S.W.3d at 572.

⁹ Id. at 572-73.

¹⁰ Id. at 573, 577.

Watts contends that the trial court's ruling amounted to a denial of due process.

The Commonwealth responds that Watts failed to raise this issue in a timely manner. We agree. Watts requested the continuance only to provide notice to the Attorney General of his challenge to the constitutionality of the Sexual Offender Registration Act.¹¹ He did not ask the trial court for time to produce exculpatory evidence. Therefore this matter is not properly preserved for review.¹² Furthermore, Hyatt disposes of Watts's arguments relating to the constitutionality of the Registration Act. Thus, Watts suffered no prejudice as a result of the trial court's denial of his motion for a continuance.

Accordingly, the order of sex offender risk determination entered by the Casey Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Linda Roberts Horsman
Assistant Public Advocate
Department of Public Advocacy

BRIEF FOR APPELLEE:

A.B Chandler, III
Attorney General of Kentucky

¹¹ KRS 418.075.

¹² The general rule is that a party must make a proper objection to the trial court and request a ruling on that objection or else the issue is deemed waived and not eligible for appellate consideration. See Bell v. Commonwealth, Ky., 473 S.W.2d 820, 821 (1971). An objection asserting one ground of error does not preserve other potential grounds of error. Dean v. Commonwealth, Ky., 844 S.W.2d 417, 421 (1992).

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