

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-002774-MR

ROBERT PERKINS

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE GARY PAYNE, JUDGE
ACTION NO. 88-CR-00095

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
REMANDING
** **

BEFORE: EMBERTON, CHIEF JUDGE; DYCHE AND MILLER¹, JUDGES.

EMBERTON, CHIEF JUDGE: This case has been abated pending resolution by the Kentucky Supreme Court of issues related to the constitutionality of the Kentucky Sex Offender Registration statutes.² Because the recent Supreme Court opinion of Hyatt v. Commonwealth,³ is dispositive of Perkins's contention that the sex offender registration legislation is unconstitutional as applied to him, we need only address the question of whether

¹ Judge Miller concurred in this opinion prior to his retirement effective January 1, 2003.

² Kentucky Revised Statutes (KRS) 17.500 to 17.578.

³ Ky., 72 S.W.3d 566 (2002).

Perkins was entitled to funds for an independent expert in preparation for his risk assessment hearing.

Although Hyatt emphasizes 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 and that the registration statutes have a purely regulatory purpose, the court nevertheless made clear that certain due process rights attach to the risk assessment hearing:

We further agree with the Court of Appeals that this case should be remanded to the circuit court because of the untimely arrival of the Risk Assessment Report. In addition, we believe the case should be remanded for the failure of Dr. Wagner to attend the hearing. The procedural due process rights of Hyatt were violated at the risk assessment hearing because the report arrived too late to provide him with notice of its contents, to allow his counsel to read and consider it and to allow sufficient time for preparation including the calling of expert witnesses, if any, to counter the conclusions of the report.⁴ (Emphasis added).

It seems to us that the right to call expert witnesses to counter the conclusions of the report would be a nullity in the case of indigent defendants if funds to hire such an expert were not provided. Because our Supreme Court saw fit to specifically identify the right to call experts at the hearing as a component of procedural due process, we feel compelled to conclude that such a right necessarily includes provision of funds reasonably sufficient to obtain expert testimony similar to

⁴ 72 S.W.3d at 573.

that obtained by defendants capable of hiring such experts at their own expense.⁵

This case is therefore remanded to the Fayette Circuit Court for a determination of whether appellant fits the criteria for provision of such funds and thereafter further proceedings consistent with this opinion and with Hyatt, supra.

ALL CONCUR.

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⁵ See KRS 31.110.