

RENDERED: January 24, 2003; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-002901-MR

JOHN M. BUCKNER

APPELLANT

APPEAL FROM JEFFERSON CIRCUIT COURT
v. HONORABLE JAMES M. SHAKE, JUDGE
ACTION NO. 82-CR-001148

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

* * * * *

BEFORE: COMBS AND PAISLEY, JUDGES; and JOHN D. MILLER, Special Judge.¹

PAISLEY, JUDGE: This is an appeal from an order entered by the Jefferson Circuit Court determining that appellant is a high risk sex offender for purposes of sex offender registration. KRS 17.500 - 17.991. For the reasons stated hereafter, we affirm.

This court entered an order in September 2000 placing this appeal in abeyance pending the Kentucky Supreme Court's

¹ Senior Status Judge John D. Miller sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5) (b) of the Kentucky Constitution.

review of issues regarding the interpretation and constitutionality of KRS 17.500, et seq. This court subsequently directed appellant to show cause why his case should not be summarily affirmed under the authority of Hyatt v. Commonwealth, Ky., 72 S.W.3d 566 (2002). Appellant admitted in response to the show cause order that Hyatt resolved all but one of the issues raised in his appeal.

The sole issue on appeal, therefore, pertains to the fact that although appellant's term of incarceration began prior to the legislature's passage of the registration requirement set out in KRS 17.500, et seq., 1998 legislative amendments provided that "KRS 17.500-540 and KRS 17.550-991 applied to persons individually sentenced or incarcerated after July 15, 1998." (Emphasis added.) Hyatt, 72 S.W.3d at 570. Although appellant admits that this issue was not raised below, he asserts that it may be raised on appeal because if the statute is inapplicable to him, the trial court lacked jurisdiction to compel his registration as a sex offender.

Hyatt addressed the separate appeals of three sex offenders, all of whom were imprisoned when KRS 17.500, et seq. was enacted in 1994. Although Hyatt did not specifically address the issue now before us, the court acknowledged that the act applies to persons "incarcerated after July 15, 1998," before it considered the appeals of the three persons who were incarcerated at the time of the act's passage. Clearly, the court's

consideration of such appeals is at odds with appellant's argument herein that KRS 17.500, et seq. is inapplicable to sex offenders who were incarcerated as of July 15, 1998. Moreover, Hyatt expressly rejected the argument that retroactive application of the statutes would violate the prohibitions against ex post facto laws or double jeopardy. That being so, we conclude that appellant is not entitled to relief on the ground that the trial court lacked jurisdiction to compel him to register as a sex offender.

The court's order is affirmed.

ALL CONCUR.

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