

Commonwealth Of Kentucky

Court of Appeals

NO. 1999-CA-003097-MR

COMMONWEALTH OF KENTUCKY

APPELLANT

v. APPEAL FROM GRAVES CIRCUIT COURT
HONORABLE JOHN T. DAUGHADAY, JUDGE
ACTION NO. 93-CR-00033

J.W. TURNER

APPELLEE

OPINION

REVERSING AND REMANDING

** ** * * *

BEFORE: BARBER, KNOPF, AND TACKETT, JUDGES.

BARBER, JUDGE: Appellee J.W. Turner entered a plea pursuant to North Carolina v. Alford to six counts of incest with a minor child. In 1993, Turner was sentenced to serve twenty years. In 1999 the Graves Circuit Court entered an order holding that the Commonwealth of Kentucky Corrections Cabinet was prohibited from treating Turner under the provisions of KRS 17.500-17.570. The

trial court based this ruling on the fact that Turner was sentenced prior to the effective date of the statute.

The Commonwealth appeals the denial of its right to have Turner assessed and treated as a sex offender under sex offender risk assessment and notification statutes. Turner was incarcerated at the time the Act became effective and therefore the Act applies to him by its express terms. Turner does not dispute the fact of his guilty plea, or that he was incarcerated on the effective date of the relevant statutes.

The Kentucky Supreme Court has ruled that the sex offender risk assessment and notification statutes do not violate any constitutional rights of a defendant. See: Hyatt v. Commonwealth, Ky., 72 S.W.3d 565, 575 (2002). The statute in question applies equally to those sentenced by jury and those pleading guilty. Hyatt v. Commonwealth, supra., 72 S.W.3d at 574. The law may properly be retroactively applied. Martinez v. Commonwealth, Ky., 72 S.W.3d 581, 584 (2002). This is so because the law is characterized as remedial, rather than punitive, in nature. Hyatt v. Commonwealth, supra., 72 S.W.3d at 573.

Upon his release, Turner is properly required to register and comply with the sex offender notification provisions in accordance with the law, as found in KRS 17.500 and KRS 17.580. We reverse the determination of the Graves

Circuit Court, and remand the action for a decision consistent with this Opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

No Brief Filed.