

RENDERED: JUNE 27, 2003; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 1999-CA-003098-MR

LEON FAISON

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JUDITH MCDONALD-BURKMAN, JUDGE
ACTION NO. 83-CR-000669

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: BARBER, COMBS, AND PAISLEY, JUDGES.

BARBER, JUDGE: Appellant Leon Faison appeals his assessment under KRS 17.570, which required a sex offender risk assessment for every individual convicted of, or incarcerated for, a sex offense at the time the statute was enacted in 1998. He argues that as his conviction occurred in 1983, the law cannot properly apply to him.

The record shows that a sex offender risk assessment of Faison was made in accordance with the law in 1999. The law directed the sex offender risk assessment to be made by the Court, with the assistance of expert witnesses. See: KRS 17.570.

After evaluation by that expert witness and a review of Faison's record, Faison was found to be a high risk offender. He was determined to have a personality disorder; admitted to numerous past sexual offenses, and failed to complete a sex offender treatment program. Faison appeals the validity of the risk assessment.

Faison was convicted of first degree rape. He argues that he is not a sex offender, thus the law should not apply to him. The trial court may properly classify a defendant as a sex offender based on his conviction at trial. Mullins v. Commonwealth, Ky., 956 S.W.2d 210 (1997). Kentucky law provides that the plain meaning of a word and the purpose of a statute must be used in determining whether it applies to a defendant. Owens-Illinois Labels, Inc. v. Commonwealth, Ky. App., 27 S.W.3d 798, 803 (2000). The Courts must strive to "effectuate the plain meaning and unambiguous intent expressed in the law" when construing terms used in a statute. J.D.K. v. Commonwealth, Ky. App., 54 S.W.3d 174, 175 (2001). The plain meaning of the term "sexual offender," coupled with the intent of the statute

clearly apply to Faison. The record shows that the trial court properly found him to be a sex offender, and the law applied to him.

Faison argues that KRS 17.500 et seq., should not apply retroactively. He asserts that his constitutional rights are affected by application of the sex offender laws to him. KRS 17.570(1) held that it applied to "persons individually sentenced or incarcerated after the effective date of this Act." The Kentucky Supreme Court held that the purpose of the law was remedial, rather than punitive, and that it properly applied to persons convicted prior to the enactment of the act and incarcerated when the act became effective. See: Martinez v. Commonwealth, Ky., 72 S.W.3d 581, 584 (2002). The Kentucky Supreme Court found that application of the sex offender risk assessment statutes does not violate the Constitutional rights of a defendant. Hyatt v. Commonwealth, Ky., 72 S.W.3d 565, 575 (2002).

The law in effect at the time Faison was assessed is binding upon him. Maggard v. International Harvester Co., Ky., 508 S.W.2d 777 (1974). He was assessed in accordance with the law. We affirm the trial court's conduct in holding a risk assessment hearing in Faison's case, and in assessing him in accordance with the applicable law.

ALL CONCUR.

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