

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 1999-CA-003141-MR

EDWIN O'BRYAN STARKS

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE STEPHEN K. MERSHON, JUDGE  
ACTION NO. 95-CR-001971

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

\*\* \*\* \* \* \* \*\*

BEFORE: BARBER, COMBS AND PAISLEY, JUDGES.

BARBER, JUDGE: Edwin Starks appeals from a circuit court determination finding him a moderate risk sex offender after conducting a sex offender risk assessment as required by law.

KRS 17.570 directs the sentencing court to conduct a pre-release hearing on every case involving a sex offender, and make a determination that a defendant is a low, medium or high risk to commit another sex crime, as such is defined in KRS Chapter 510. The effective date of the statute requiring such a

determination was July 15, 1998. Starks was sentenced in 1996. Starks argues that as his offense was committed prior to that date, the law should not apply to him, citing KRS 446.080(3), which provides that "no statute shall be construed as retroactive, unless expressly so declared."

The law states on its face that its provisions apply to those "persons individually sentenced or incarcerated after the effective date of this act." KRS 17.570(1). As Starks was incarcerated at the time the Act became effective, July 15, 1998, he was subject to the provisions of the law.

Starks was convicted of first degree sexual abuse. Starks argues that he is not a "sex offender," as no court has made a determination that he is a sex offender as defined in KRS 17.550(2).

Starks asserts that conducting a risk determination hearing in his case deprives him of his due process rights, and constitutes inception of a new and separate criminal action against him.

The Kentucky Supreme Court has ruled that the sex offender risk assessment statutes do not violate any Constitutional rights of a defendant. Hyatt v. Commonwealth, Ky., 72 S.W.3d 565, 575 (2002). The law is properly retroactively applied. Martinez v. Commonwealth, Ky., 72 S.W.3d 581, 584 (2002). The trial court has jurisdiction to conduct

the hearing, and to classify the defendant as a sexual offender based on his conviction at trial. Mullins v. Commonwealth, Ky., 956 S.W.2d 210 (1997). Starks has not shown that he did not commit an offense which the trial court could find made him a sexual offender. Starks has not shown error in his risk assessment.

For the foregoing reasons, we affirm the circuit court's determination.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Daniel T. Goyette  
Jefferson District Public  
Defender  
Louisville, Kentucky

J. David Niehaus  
Deputy Appellate Defender  
Louisville, Kentucky

BRIEF FOR APPELLEE:

Albert B. Chandler, III  
Attorney General of Kentucky  
Frankfort, Kentucky

Tami Allen Stetler  
Assistant Attorney General  
Frankfort, Kentucky