

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2000-CA-000681-MR

MORRIS STOKES

APPELLANT

v. APPEAL FROM CHRISTIAN CIRCUIT COURT  
HONORABLE EDWIN M. WHITE, JUDGE  
ACTION NO. 95-CR-00182

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING  
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BEFORE: COMBS, KNOPF, AND TACKETT, JUDGES.

KNOPF, JUDGE: Morris Stokes appeals from an order of the Christian Circuit Court classifying him as a high risk sex offender pursuant to KRS 17.570. On December 11, 2000, this Court ordered that Stokes's appeal be abated pending a decision by the Kentucky Supreme Court on its grant of discretionary review in three cases, all three of which concerned the constitutionality of the Sexual Offender Registration Act, commonly known as "Megan's Law."<sup>1</sup> Hyatt v. Commonwealth,<sup>2</sup> which

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<sup>1</sup> KRS 17.500 et seq.

consolidated all three cases and upheld the constitutionality of the Act, is now final. Thus, this case is ripe for our review. Based upon the Supreme Court's holding in Hyatt and Stokes's failure to properly preserve the remaining issue, we affirm the trial court's order.

In March of 1996, Stokes pleaded guilty to five counts of first degree sexual abuse. The trial court sentenced him to a total prison term of ten years. In September of 1999, prior to his anticipated release from prison, the trial court ordered Stokes to undergo a sex offender risk assessment, and the court scheduled a hearing to determine his classification type for registration and community notification under the Sex Offender Registration Act. After appointment of counsel, Stokes argued that the court no longer had jurisdiction over him.

The trial court rejected this argument and proceeded with the hearing on March 1, 2000. At the hearing, the trial court denied Stokes's motion to exclude the sexual offender risk assessment report submitted by Dr. James J. Van Nort. Shortly before the conclusion of the hearing, Stokes's counsel made an oral motion for a continuance and for funding for an independent evaluation to dispute Dr. Van Nort's findings. The trial court also denied this motion. Based upon the risk assessment report

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<sup>2</sup> Ky., 72 S.W.3d 566 (2002).

and Dr. Van Nort's testimony, the trial court found Stokes to be a high risk sexual offender. This appeal followed.

Stokes first argues that the Sex Offender Registration Act may not be constitutionally applied to persons who were convicted of an offense which occurred prior to the statute's effective date. Our Supreme Court in Hyatt specifically rejected the argument that the registration requirement constitutes additional punishment in violation of the doctrine of *res judicata*, the prohibition against *ex post facto* laws, and the constitutional provision concerning double jeopardy.<sup>3</sup> Furthermore, Stokes concedes that Hyatt now disposes of this aspect of his appeal.

Stokes also argues that the trial court erred in denying his motion for a continuance and for funding for an independent evaluation. Although the Court in Hyatt held that the registration scheme was not penal in nature, it nevertheless held that it was imperative that counsel have time to adequately prepare for the hearing, that the author of the risk assessment report be in attendance at the hearing, and that the sex offender be afforded the opportunity to present expert testimony to rebut the opinions expressed by the author of the risk

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<sup>3</sup> Id. at 573.

assessment report.<sup>4</sup> Stokes contends that the trial court's ruling amounted to a denial of due process.

The Commonwealth responds that Stokes failed to raise this issue in a timely manner. We agree. Unlike in Hyatt or in Pendleton v. Commonwealth,<sup>5</sup> the Commonwealth provided Stokes's counsel with a copy of Dr. Van Nort's report six weeks prior to the hearing. Indeed, the trial court had continued the hearing twice to allow Stokes to prepare adequately and to subpoena Dr. Van Nort to testify. At the hearing on March 1, 2000, Stokes's counsel questioned Dr. Van Nort about the testing and methodology which was used to assess Stokes as a high risk offender. However, counsel did not request funding and a continuance for further testing until after the court admitted Dr. Van Nort's report. Under the circumstances, we conclude that Stokes was afforded a meaningful hearing in which to present his position and the ability to contest the Commonwealth's expert witness, and his last-minute motions were untimely.<sup>6</sup>

Accordingly, the judgment of the Christian Circuit Court is affirmed.

ALL CONCUR.

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<sup>4</sup> Id.

<sup>5</sup> Ky. 83 S.W.3d 522 (2002).

<sup>6</sup> RCr 9.22; West v. Commonwealth, Ky., 780 S.W.2d 600, 602 (1989).

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