

Commonwealth Of Kentucky
Court Of Appeals

NO. 2000-CA-000889-MR

KEITH LABER

APPELLANT

v.

APPEAL FROM CARTER CIRCUIT COURT
HONORABLE SAMUEL C. LONG, JUDGE
ACTION NO. 95-CR-00023

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 Carter Circuit Court determining that appellant is a low 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 October 2000 placing this appeal in abeyance pending the Kentucky Supreme Court's 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,

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.

Ky., 72 S.W.3d 566 (2002). Appellant asserted in response that the outstanding issues in his case are not resolved by the application of Hyatt, and the appeal was returned to the court's active docket.

The issues on appeal pertain to the fact that appellant's term of incarceration began prior to the January 1999 effective date of KRS 17.570(1), which provided for a sex offender risk assessment "[u]pon conviction of a 'sex crime' as defined in KRS 17.500 and within sixty (60) calendar days prior to the discharge, release, or parole of a sex offender[.]" Appellant contends that because his conviction predated the statute, the risk assessment procedures were not applicable to him. Appellant further contends that statutory rules of construction and the prohibition against ex post facto laws would be violated by the retroactive application of KRS 17.570(1). We reject both arguments.

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 issues now before us, the court acknowledged that the 1998 amendments to the act (which included KRS 17.570(1)) apply to persons "incarcerated after July 15, 1998," before it considered issues relating to the sex offender risk assessments of the three persons who were already incarcerated at the time of the act's passage. Clearly, Hyatt's consideration of such issues is at

odds with appellant's argument that KRS 17.570(1) is inapplicable to sex offenders who were incarcerated at the time of the passage of the act. Hyatt expressly rejected the argument that retroactive application of the statutes would violate the prohibition against ex post facto laws. Hence, we conclude that appellant is not entitled to relief herein.

The court's order is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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