

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-001206-MR

RICHARD TROWELL

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE ANN O'MALLEY SHAKE, JUDGE
ACTION NO. 94-CR-000905

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: COMBS, KNOPF, AND TACKETT, JUDGES.

KNOPF, JUDGE: Richard Trowell appeals from an order of the Jefferson Circuit Court classifying him as a moderate risk sex offender pursuant to KRS 17.570. On September 26, 2000, this Court ordered that Trowell'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."¹ Hyatt v. Commonwealth,² which

¹ 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 concluding that the remaining issue is without merit, we affirm.

In May of 1994, Trowell pleaded guilty to one count of rape in the third degree.³ In accord with the Commonwealth's recommendation, the trial court sentenced him to three years imprisonment, but the court directed that the sentence be probated. Subsequently, however, the trial court revoked his probation. In March of 2000, prior to his anticipated release from prison, the trial court ordered Trowell 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.

At the hearing on March 28, 2000, Trowell's counsel argued that the court no longer had jurisdiction over him, that the Sex Offender Registration Statute did not apply to him, and that the Act may not be constitutionally applied to persons who were convicted of an offense which occurred prior to the statute's effective date. The trial court rejected these arguments and following the hearing, classified Trowell as a moderate risk sex offender. This appeal followed.

² Ky., 72 S.W.3d 566 (2002).

³ KRS 510.060.

The Kentucky Supreme Court has declared that the sex offender and notification statutes do not violate any constitutional protection against double jeopardy or *ex post facto* laws.⁴ The registration and notification required by this statute does not amount to punishment. Rather, this statutory system is a remedial measure designed to protect and inform the public and not to punish the offender. Thus, the registration requirement in question has a regulatory purpose because the dissemination of information has never been considered a form of punishment.⁵ Trowell concedes that Hyatt disposes of these aspects of his appeal.

Trowell also argues that the trial court erred in ordering him to register in the sex offender registration system because he does not meet the statutory definition of "sex offender." He contends that the plain language of 1998 Ky. Acts Chapter 606, Section 199 (1998 Act) exempts him from the reach of the 1998 amendments to the Sex Offender and Registration and Notification Law.

The 1998 Act in pertinent part reads as follows:

The provisions of Sections 138 through 155 of this Act shall apply to persons individually sentenced or incarcerated after the effective date of this Act.

⁴ Hyatt, 72 S.W.3d at 571-73; Martinez v. Commonwealth, Ky. 72 S.W.3d 581 (2002).

⁵ Hyatt, 72 S.W.3d at 580.

The language of the 1998 Act differs significantly from the language of the 1994 Act, which applied the provisions only to "persons convicted after July 15, 1994." We believe this evidences the intent of the Legislature that the 1998 Act apply, not only to persons sentenced after the effective dates of the Act, but also to persons "incarcerated after the effective date of the Act." If the Legislative intent was to apply the 1998 amendments only to individuals who received sentences after the effective date of July 15, 1998, there would have been no need for the phrase "or incarcerated." The use of this phrase clearly shows the Legislature's intent to include inmates who were sentenced before the amendments, and who were still incarcerated when the Act became effective. Since Trowell was incarcerated at the time the Act became effective it applies to him.

The opinion in Hyatt also supports this conclusion. In Hyatt, the Supreme Court determined that the amendments were applicable to offenders who were convicted before the effective date of the amendments. As such, it was proper for the circuit court to make the Sex Offender Risk Determination.

Accordingly, the order of sex offender risk determination entered by the Jefferson Circuit Court is affirmed.

ALL CONCUR.

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