

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2000-CA-001746-MR

WILLIAM JONES

APPELLANT

v.

APPEAL FROM LAUREL CIRCUIT COURT  
HONORABLE RODERICK MESSER, JUDGE  
INDICTMENT NO. 99-CR-00190

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: EMBERTON, CHIEF JUDGE; KNOPF AND SCHRODER, JUDGES.

KNOPF, JUDGE: On April 17, 2000, William Jones entered a plea of guilty to three counts of sexual abuse in the first degree.<sup>1</sup> Prior to sentencing, the trial court directed that a sexual-offender risk-assessment evaluation be prepared. On June 23, 2000, Jones's counsel requested a continuance and a hearing to challenge the findings in the report. The trial court denied

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<sup>1</sup> KRS 510.110. Sexual abuse in the first degree is a class D felony. KRS 510.110(2).

the motions and proceeded with the sentencing hearing.<sup>2</sup> Thereafter, the court sentenced Jones to a total of fifteen years. On appeal, Jones argues that the trial court erred in denying his request for a continuance and for a hearing to challenge the findings of the evaluator in the risk-assessment report. Due to statutory changes, we conclude that Jones was not entitled to a hearing to challenge the risk-assessment report. Hence, we affirm.

In Hyatt v. Commonwealth,<sup>3</sup> the Kentucky Supreme Court upheld the constitutionality of the Sexual Offender Registration Act,<sup>4</sup> commonly known as "Megan's Law". But while the Court held that the registration scheme was not penal in nature, it also 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 assessment report.<sup>5</sup> Later, in Pendleton v. Commonwealth,<sup>6</sup> the

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<sup>2</sup> The videotape of the hearing indicates that the trial court delayed the sentencing hearing several hours to allow Jones and his counsel to review the report.

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

<sup>4</sup> KRS 17.500, *et seq.*

<sup>5</sup> Hyatt, 72 S.W.3d at 573, 577.

<sup>6</sup> Ky., 83 S.W.3d 522 (2002).

Supreme Court added that the due process clauses of the Federal and Kentucky Constitutions guarantee the right of a defendant to call witnesses on his behalf. While due process rights may be limited in certain proceedings, a defendant is entitled to notice of the report's contents in order to be able to present experts to testify during the risk-assessment hearing.<sup>7</sup> Thus, Jones argues that the trial court abused its discretion when it denied his motion for a continuance and for a hearing.

In response, the Commonwealth notes that Hyatt and Pendleton were decided under the 1998 version of Megan's Law. During its 2000 session, the General Assembly made extensive amendments to the Act. The 2000 amendments eliminated the classification of sexual offenders as high, moderate or low risk for purposes of determining the period of registration. Rather, the period of time which a convicted sexual offender must register is now based solely on the offense for which he or she was convicted.<sup>8</sup> Although the Act retains the use of the sexual-offender risk-assessment reports, they are now conducted as part of a comprehensive pre-sentencing evaluation. The purpose of such reports are to provide the trial court with a recommendation assessing the defendant's risk of re-committing a

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<sup>7</sup> Id. at 528.

<sup>8</sup> KRS 17.520.

sex crime, the threat which the defendant poses to public safety, the defendant's amenability to sex offender treatment, and the nature of the required treatment.<sup>9</sup> In addition, the 2000 amendments to the Act specifically repealed KRS 17.570, which provided for a sex-offender risk-assessment hearing, factual findings by the court designating the defendant's level of risk, and a right of appeal from the order designating the level of risk.

The Commonwealth notes that Jones entered his guilty plea to the offenses on April 17, 2000 - six days after the amendments to the Act took effect. Consequently, the Commonwealth argues that Jones did not have any right to a hearing or to an opportunity to challenge the findings in the risk-assessment report. We agree with the Commonwealth that, since Jones entered his guilty plea and was sentenced after the effective date of the 2000 amendments to the Sexual Offender Registration Act, he was not entitled to the type of hearing which would have been conducted under the 1998 version of the Act.

As noted above, the current version of Megan's Law dispenses with the sex-offender risk-assessment hearing. The contents of the risk-assessment report no longer affect the

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<sup>9</sup> KRS 17.554. See also KRS 532.050(4).

classification of a defendant under the Act. Likewise, the trial court no longer has a role in determining the period during which a convicted defendant will be required to register.

The risk assessment report is still considered by the trial court as part of the pre-sentencing procedure.<sup>10</sup> It could be argued that a defendant has the right under KRS 532.050 to a hearing to challenge the conclusions in the risk assessment report.<sup>11</sup> However, this Court has previously held that KRS 532.050(4) does not permit a defendant to challenge the contents or conclusions of a risk-assessment report at the sentencing hearing. That statute merely requires the Commonwealth to furnish the defendant with a copy of the evaluation, which was done in this case.<sup>12</sup> Furthermore, the trial court was not

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<sup>10</sup> See KRS 532.050(4).

<sup>11</sup> See KRS 532.050(6), which provides:  
Before imposing sentence, the court shall advise the defendant or his counsel of the factual contents and conclusions of any presentence investigation or psychiatric examinations and *afford a fair opportunity and a reasonable period of time, if the defendant so requests, to controvert them.* The court shall provide the defendant's counsel a copy of the presentence investigation report. It shall not be necessary to disclose the sources of confidential information. (*Emphasis added*).

<sup>12</sup> Berg v. Commonwealth, Ky. App., 20 S.W.3d 475, 477-78 (2001). *But see Woodall v. Commonwealth*, Ky., 63 S.W.3d 104 (2001), in which the Kentucky Supreme Court upheld a trial court's use of a risk-assessment report during sentencing. However, the Court suggested that a defendant's statements made during the risk-assessment evaluation can not be used to establish lack of remorse or the appropriateness of the penalties fixed by the jury. Id. at 121-22.

required to conduct a Daubert-type hearing to consider the admissibility of risk-assessment test results in the sentencing proceeding.<sup>13</sup> Consequently, we conclude that the trial court did not abuse its discretion when it denied Jones's request for a continuance and for a hearing.

Accordingly, the judgment of conviction by the Laurel Circuit Court is affirmed.

ALL CONCUR.

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<sup>13</sup> Douglas v. Commonwealth, Ky., 83 S.W.3d 462, 464 (2002).