

Commonwealth Of Kentucky

Court of Appeals

NO. 2001-CA-002695-MR

ANTHONY WAYNE GIBSON

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT
HONORABLE DOUGLAS M. STEPHENS, JUDGE
ACTION NO. 01-CR-00484

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM, DYCHE AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Anthony Wayne Gibson brings this appeal from a Final Judgment and Sentence of Imprisonment entered on October 22, 2001, by the Kenton Circuit Court. Appellant entered a conditional plea of guilty to the offense of failure to comply/register as a sex offender. Kentucky Revised Statutes (KRS) 17.510.¹ (KRS 17.500-17.540 is commonly referred to as

¹ Kentucky Revised Statutes 17.500-17.540 is Kentucky's Sex Offender Registration Act. Similar statutes have been enacted by most states and are referred to as "Megan's Law." The Kentucky General Assembly adopted the first version of Megan's Law in 1994. It was later amended in 1998 and 2000.

"Megan's Law.") He was sentenced to one year in prison. We affirm.

On July 27, 2001, appellant was indicted in the Kenton Circuit Court for failure to comply/register as a sex offender in violation of KRS 17.510. Appellant had been released from prison on December 13, 1998, for previous sex offender convictions. Upon release, appellant registered as a sex offender but subsequently failed to register a change of address with the Kenton County Probation and Parole office within five days after his change of address.

Appellant argues in "good faith" that Megan's law is an ex post facto law and that the constitutionality of a similar statute is now pending before the United States Supreme Court. Appellant also contends that requiring him to "register as a sex offender without conducting a hearing to permit him to contest his risk to the community" violates his due process rights under the Kentucky and United States Constitutions. Appellant, however, admits that these issues were not preserved for our review. Appellant also acknowledges in his brief that "it appears that any arguments Appellant might have preserved in the circuit court have been foreclosed" by the Kentucky Supreme Court's ruling in the Martinez v. Commonwealth, Ky., 72 S.W.3d 581 (2002), including his ex post facto argument.

However, appellant argues that this Court should consider his appeal under Ky. R. Crim. P. 10.26 and further, that this Court should reconsider the holdings of the Kentucky Supreme Court in Martinez and Hyatt v. Commonwealth, Ky., 72 S.W.3d 566 (2002). Again, appellant submits that the holdings of these cases effectively violate his due process rights under the Kentucky and United States Constitutions. We perceive no merit to either of appellant's arguments.

It is well established that a guilty plea waives all defenses except that the indictment does not charge a public offense; an exception to this rule are those issues specifically reserved for appellate review in a conditional plea of guilty. We also do not believe appellant has made a showing of manifest injustice under RCr 10.26.

Additionally, as concerns Martinez and Hyatt, Rules of the Supreme Court 1.030(8)(a) states that "[t]he Court of Appeals is bound by and shall follow applicable precedents established in the opinions of the Supreme Court and its predecessor court." As such, we are without authority to "revisit" opinions rendered by the Supreme Court.

As appellant admits the issues raised on appeal were not reserved by his conditional guilty plea, we are of the opinion that the issues have been waived.

For the foregoing reasons, the judgment of the Kenton
Circuit Court is affirmed.

ALL CONCUR.

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